Supreme Court, U.S.
FILED

01-398 AUG 3 1 2001

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

DEE ELLEN GARRISON BARDES,

Petitioner,

vs.

SAMUEL POGUE TODD III,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals For The State Of Ohio, First Appellate District Of Ohio, Hamilton County

PETITION FOR WRIT OF CERTIORARI

DEE ELLEN G. BARDES
Petitioner, pro se
1035 Paxton Ave.
Cincinnati, OH 45208-2828
513/871-4959
No fax available

252-49/CS

QUESTIONS PRESENTED

A.

1) Whether individuals' *civil privacy expectations* – including, inter alia, disclosural, autonomy, educational, associational, familial, contractual, equal justice, equal state citizenship – are federally *safeguarded* against unreasonable intrusions by states, officials, and policymakers, via federal common law, and via The United States Constitution, including Article I, §10, cl. 1, Article IV, §1-2, Article VI, cl. 2, First, Fourth and Ninth Amendments, Fourteenth Amendment, §1 (citizenship, equal protection, privileges or immunities), Twenty-Sixth Amendment, §1, requiring *overruling* of landmark civil decisions governing privacy expectations, determined inter alia, on The Fourteenth Amendment, §1 (due process clause).

2) Whether a state's failure to make prepaid provisions and allocate children's educational expenses, preschool through higher education including graduate-level studies, impels Gender Discrimination and Socio-Economic Discrimination against mothers, in violation of Fourteenth Amendment, §1 (citizenship, privileges, equal protection), rendering O.R.C. Title 31 unconstitutional facially, as applied and in effect, further violating Fourth Amendment safeguards.

3) Whether *appropriate education,* including preschool through appropriate higher education,

QUESTIONS PRESENTED – Continued

is a fundamental right, necessity, and or educational benefit, which The United States of America as well as each state has a federal duty and obligation to enable and provide, specifically including meeting the *special educational* needs of its *most gifted*, under the guarantees of The United States Constitution, including inter alia, Article IV, §1-2, Article VI, cl. 2, First, Fourth, Fifth, and Ninth Amendments, Fourteenth Amendment, §1 (citizenship, equal protection, privileges or immunities), Twenty-Sixth Amendment, §1.

4) **Whether fathers possess any federal parental responsibilities and duties to appropriately educate offspring or children, by federal common law, federal regulations, Congressional enactments, Congressional intent, et al., and do such paternal obligations include economic provisions, i.e., savings, budgeting, paying, financing or otherwise fiscally providing for appropriate education, preschool through higher education.**

5) **Whether children have federal constitutional rights, freedoms, and privileges, to continue familial bonds, "the parental duty to educate", a subset of both the economic "parental duty to support", and the broader, "parental responsibilities", rendering O.R.C. Title 31 unconstitutional facially, as applied and in effect.** (*First, Fourth, Ninth, Fourteenth Amendments, §1 (citizenship, privileges, equal protection), U.S. Const.).*

QUESTIONS PRESENTED – Continued

6) **Whether "gifted" children have federal constitutional rights, freedoms, and privileges to access and opportunity to appropriate gifted education, preschool through higher education rendering O.R.C. Title 31 unconstitutional facially, as applied and in effect.** (*First, Fourth, Ninth, Fourteenth Amendments, §1 (citizenship, privileges, equal protection), U.S. Const.*).

7) Whether Ohio's current and domestic relations statutes in effect as of December 30, 1999 decrees' entry date, as set forth in App. H comprising Title 31 Ohio Revised Code, are unconstitutional, facially, as applied, and or in effect, violating two gifted brothers' personal rights, and impelling a sibling legislative classification of *one* [*Village of Willowbrook v. Olech* (2000)], since judicial findings attest that eleven-year-old Samuel commences college at *age 18*, whereas his ten year old brother, *Garrison, commences college at age 17*, clearly availing unequal educational benefits to the brothers when access to courts for college support orders post minority was foreclosed, impelling Equal Protection Age Discrimination, and further intruding on Samuel's Right to Petition the Government for Redress of Grievances, Right to Full Participation in Electoral Process, in flagrant violation of U.S. Const., First, Fourth, Ninth Amendments, Fourteenth Amendment §1 (privileges, equal protection), §5, Twenty-Sixth Amendment, §1-2 (age discrimination prohibited which effects political participation in nexus to education), and authorities infra.

QUESTIONS PRESENTED – Continued

8) Whether Ohio's "current" and domestic relations statutes in effect as of December 30, 1999 decrees' entry date, as set forth in App. H comprising Title 31 Ohio Revised Code, are unconstitutional facially, as applied, and in effect, intruding on freedoms, Free Exercise and Equal Protection guarantees given multiple classes of *Legislative Classification Discrimination with classifications based both on the parents and on the children;* such classes include: (a) parents who are married vis a vis parents whose support obligations and parental responsibilities are dictated by the state [*federal claim* decided in favor of Father, App. 168 (4/30/99, T.d. 285); see T.d. 254, 259, 250, 238, 228; late 98 trans.]; (b) parents with educational support agreements vis a vis ones without educational support agreements; (c) parents financially able to pre-purchase college tuition/room and board credits or make other provisions for college vis a vis parents who need or want to "pay-as-you-go"; (d) class of children commencing college at or after age 18 vis a vis class of children commencing college prior to 18; (e) gifted children vis a vis not gifted children; (f) gifted vis a vis handicapped; in flagrant violation of U.S. Const., First, Fourth, Ninth Amendments, Fourteenth Amendment §1 (citizenship, privileges, equal protection), §5, Twenty-Sixth Amendment, §1-2 (age discrimination prohibited which affects political participation in nexus to education), authorities, infra.

QUESTIONS PRESENTED – Continued

9) **Whether the free-exercise of individual Ohio parents' and children's school choice in instant case, *Bardes v. Todd*, should be weighed with the pending school voucher case, *Simmons-Harris v. Zelman*, 234 F.3d 945, 149 Ed. Law Rep. 691 (6th Cir. (Ohio) Dec 11, 2000), and whether the state's intrusion on such neutral private choice of schooling and higher education violated the First, Fourth and Fourteenth Amendments impacting that case's determination.**

10) **Whether a state court which forecloses domestic relations cases from attaining 'issues' class-action (Civ. R. 23(C)(4)(a)/Fed. R. Civ. P. 23 (c)(4)(A)) status for matters arising out of familial litigation, violates equal protection, equal justice and Fourth Amendment's protections** (*Article IV, §2; Article VI, Clause 2; First Amendment associational rights, freedom to petition government for redress of grievances, Fourth Amendment's protection, Fourteenth Amendment, §1 (citizenship, privileges, equal protection), U.S. Const.*).

QUESTIONS PRESENTED – Continued

B.

11) **Whether clerks of courts are entwined governmental policymakers, and whether a state lacks state sovereignty to release or otherwise enable redisclosers to release personal information (either possessed by or entrusted to a state), locally or into the commerce stream, via inter alia, the Internet** *[The Privacy Act of 1974 (5 U.S.C. §552a, note, uncodified Section 7(a)(1), (b); Pub. L. 93-579); 42 U.S.C. §405; U.S. Const. Article I, §8, clause 1, (General Welfare, Spending); Article I, §8, clause 3, (Commerce); Article I, §8, clause 18, (Necessary and Proper); Article IV, §1 (Full Faith and Credit); Article IV, §2 (Privileges and Immunities); Article VI, Clause 2 (Supremacy); First, Fourth, Ninth, Tenth Amendments; Fourteenth Amendment, §1 (privileges or immunities, citizenship clauses), §5 (Congressional powers)].*

Effective October 20, 1994, The Full Faith and Credit for Child Support Orders Act (FFCCSO) was enacted, 28 U.S.C. §1738B, to establish *"national standards* under which the courts of the various States shall determine their jurisdiction to issue a child support order", Pub. L. 103-383, §2(b) (App. 277), to ameliorate the burdens on interstate commerce, Pub. L. 103-383, §2(a)(4)(C), and the deprivation of personal rights, §2(a)(4)(B). (App. 279) "Child support" encompasses the "provision of a benefit" "including payment of * * * educational expenses", 28 U.S.C. §1738B (App. 267, 279).

QUESTIONS PRESENTED – Continued

12) **Whether a state lacks state sovereignty to disable its judiciary from possessing full powers in authority and jurisdiction over emancipation, post-majority support, and educational benefits [decided, App. 165 (T.d. 311, 9/1/99) against mother, T.d. 303, 8/6/99 fed. mot., p. 3-8+, memo]** *(28 U.S.C. §1738B, with Pub. L. 103-383, IDEA, UIFSA model law (42 U.S.C. §666(f) R.C. 3115.01 et seq., et al.); Article IV, §1; Article IV, §2; Article VI, clause 2; Fourteenth Amendment, §1 (citizenship, privileges, equal protection), §5, Fourth Amendment, Tenth Amendment, Twenty-Sixth Amendment, Article I, §8, clause 1; Article I, §8, clause 3; Article I, §8, clause 18; federal common law.*

13) When 28 U.S.C. §1738B, congressional intent, and federal regulations (i.e. model law, UIFSA), require a state to extend access to courts' authority and jurisdiction to effectively give preferential treatment to shorter-term residents, while such state precludes such same access to judicial powers and authority for post majority support orders to long term residents, has such state obstructed congressional quest for uniformity, eliminating state sovereignty and further discriminated against *children's and parents' residency classifications*, in violation of U.S. Const., Art. IV, §1-2, Fourteenth Amendment, §1 (citizenship, equal protection, privileges or immunities), the right to travel, right to equal state citizenship, right to portable benefits, et al.

QUESTIONS PRESENTED – Continued

14) When state courts possess a mandatory duty to issue orders relating to the maintenance, care, & support of children and offspring, do states violate the *separation of powers* when legislative findings, are codified since emancipation and questions relating to the duration of a child's dependency, extraordinary medical, and educational support must be *judicial determinations* based on, inter alia, the child's best interests.

15) Whether a state which has embraced a 26 U.S.C. §529 prepaid college credits program, encompassing tuition/room and board, and other college related expenses, such as Ohio College Savings via Ohio Tuition Trust Authority, et al., has assumed a federal duty to provide uniform access to such state resource, in compliance with the federal policy in support of families' saving over time, inter alia, 26 U.S.C. §529 (Internal Revenue §529), and do states violate such federal duty when allocating parental support and responsibilities without compelling acquisition of prepaid units over time, ordering matching amounts, or employing other means to the same ends.

16) Whether individuals' *civil privacy expectations* are federally *safeguarded* against unreasonable intrusions by states, officials, and policymakers, via exercises of Congressional powers, as empowered via The United States Constitution, Article 1, §8, cl. 1, 3, 18, Tenth Amendment, Fourteenth Amendment, §5, Twenty-Sixth Amendment, §2, via intent, regulations and enactments (5 U.S.C. §552(a), 28 U.S.C. §1738B, and authorities infra) and or whether

QUESTIONS PRESENTED – Continued

such congressional dictates supercede conflicting state laws and practices, or whether federal endeavors in areas of traditional state sovereignty represent broad guideposts for judicial determination of whether society deems a privacy expectation reasonable.

PARTIES TO THE PROCEEDING

The parties to this long-percolating civil action determined by state court of last resort, Ohio Court of Appeals, First Appellate District of Ohio, Hamilton County[1] were a divorcing (App. 1, 178) Cincinnati couple, Dee Ellen Garrison Bardes ('Mother') and Samuel Pogue Todd III ('Father'), biological parents of two intellectually and academically *highly gifted*,[2] (App. 188, 183, 235, #8; T.p. 143, p. 4; T.p. 167, p. 5; T.p. 238, p. 40) minor sons, Samuel Pogue Todd IV, D.O.B.: February 19, 1990, and Garrison Bardes Todd, D.O.B.: September 26, 1991 (App. 217-218, 177, 68).

Parties Parental Status: Each party is a loving (App. 182) parent who is a full residential parent and legal custodian (App. 23, #1.1; 148, #5) of each son following 12/30/1999 court-ordered, (App. 20-21, 54, 136, 180, 256) shared parenting (App. 69, #4; 254), in accordance with Father's third parenting plan (App. 22-53).[3] Not

---

[1] For C000055 documents, and docket online go to http://www.courtclerk.org

[2] Gifted expert, Dr. Bruce Kline, *Psy.D.*, attested that Samuel possesses an **150 I.Q.** [WISC-III test], 7/31/97 Exh. L, p. 25, *"higher than the top 1% of his peers"* and Garrison is in "the *top 3% or higher*" with a **127 I.Q.** [WISC-III test], *"exceptional* because [the test] is based on norms for children * * * over six months older". T.d. 193, p. 51; T.d. 145; 7/31/97 P's Exh. J, K, L.

[3] Prior to the order, App. 136, appended to parenting decree (App. 54), entered Dec. 30, 1999, Mother retained her *temporary* designation [*shared parenting precluded prior to permanent decree entered*, O.R.C. §3109.04(D)(1)(d), "No provisional shared parenting decree shall be issued in relation to any shared parenting plan approved * * * "] *as sole residential*

PARTIES TO THE PROCEEDING – Continued

incidentally, *zero "parenting-time" difficulties* (App. 182, 1st full para; 179, 2nd para; 214, #1; 228) ever arose, 1994-present.

Standing to Argue Sons' Rights: Although children may not be "parties" to a divorce action, Mother exerts standing via continuous, vigorous representation of each son's rights (App. 9), [*Clark v. Jeter*, 486 U.S. 456, 462 (1988); *Stanton v. Stanton*, 421 U.S. 7, 11-12 (1975); *Gomez v. Perez*, 409 U.S. 535, 537 (1973)].

Class Action: Class action status sought (T.d. 273, 3/29/99 Mot.; T.d. 282, 4/29/99 Memo XIII(D); T.d. 333, pp. 12-13, Obj. E), but denied (App. 5-7; App. 169), for third-party class of litigants, "Ohio Mothers" and class members' children as to educational, privacy and disclosural rights claims, which *preclude claims from becoming moot.*

Interveners invited: As per S.C. Rule 29.4(b-c), prospective interveners were invited, to intervene *without objection*, about June 15, 2001, via Petitioner's Supplemental Application To Append Rule 29.4(b-c) Interveners' Supplement to A-1084, Petitioner's Application to The

---

parent and legal custodian (App. 418) as ordered Dec. 12, 1994 (Apps. 232, #1; 421). The May 23, 1997 Decision (App. 254) *ordered* (Apps. 146, 182, 187) *shared parenting*, with more court ordered modifications (App. 254-255) to Jan. 7, 1997 plan, with others to Nov. 20, 1998 plan (App. 143, 166-167). Third (Sept. 16, 1999) *Father's plan* was adopted; in '96, Mother submitted *two* plans, App. 179-182; *Characteristic of inability to agree is immutable.*

PARTIES TO THE PROCEEDING – Continued

Honorable John Paul Stevens, For First Extension of Time, and were provided Brief filed: (1) Theodore B. Olson, Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530-0001, [also U.S. Dept of Justice, Civil Division, attn: Robert Kopp, Director of Civil Appellate, 601 D St. N.W., Room 9002, Washington, D.C. 20530-0001, 202/514-2000 (civil appellate); 514-4451 (docket room); 514-3311 (Kopp) [Kopp separately notified July 26, 2001]; (2) Ohio Attorney General Betty D. Montgomery, State Office Tower, 30 E. Broad Street, 17th Floor, Columbus, OH 43215-3428, 614/466-4320 (duplicate copies sent July 27, 2001 to Chief Counsel staff, 614/466-2872); (3) Jim Cissell, Clerk of Courts, Hamilton City, OH, attn: Thomas M. Gould, Esq., Administrator, Clerk of Courts, 1000 Main St., Room 375, Cincinnati, OH 45202, 513/946-5656 (entwined release of litigants' personal information by clerks via Internet and locally jeopardizes individual security). *See* U.S. Dept. of Justice's Response, App. 345, and Ohio Attorney General's Response, p. xv.

Via listing, infra, such persons and entities may be considered as "parties". All prospective interveners were served with Petition, and Appendices as well, 8/31/01.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO THE PROCEEDING x

Parties Parental Status x

Standing to Argue Sons' Rights xi

Class Action xi

Interveners invited xi

TABLE OF CONTENTS xiii

TABLE OF AUTHORITIES xvi

PETITION FOR WRIT OF CERTIORARI 1

OPINIONS BELOW 1

Merits 1

Certificates of Federal Jurisdiction 2

Earlier Ancillary 2

CITATIONS 2

JURISDICTION 3

UNITED STATES CONSTITUTIONAL PROTECTIONS VIOLATED 4

FEDERAL PRIVACY EXPECTATIONS INTRUDED .. 4

RELATED RULES 5

UNCONSTITUTIONAL OHIO STATUTES CHALLENGED 5

STATEMENT OF CASE 5

Intrusions on Privacy Expectations 5

Mother wore children's shoes 8

TABLE OF CONTENTS – Continued

Page

Neutral Private Choice 8

No Order 8

Not Adequate and Not Independent 9

Seventeen at college 10

SUMMARY: BALANCE OF STATE AND FEDERAL POWERS OVER PRIVACY EXPECTATIONS 10

REASONS: ISSUES OF FIRST IMPRESSION 13

A. PRIVATE CHOICE IN CINCINNATI, ABSENT IN CLEVELAND SCHOOL VOUCHER CASE, EXTENDS DETERMINATION TO PROTECT ALL SCHOOL CHILDREN 13

B. TWENTY-SIXTH AMENDMENT GUARANTEES APPROPRIATE EDUCATION IN NEXUS WITH POLITICAL FREEDOMS 15

C. CHILDREN'S RIGHTS TO CONTINUE FAMILIAL BONDS, "PARENTAL DUTY TO EDUCATE", AND TO EQUAL STATE CITIZENSHIP 17

D. FOURTH AMENDMENT SAFEGUARDS SUPERSEDE SUBSTANTIVE DUE PROCESS LANDMARKS 18

ARGUMENT 21

1. Preclusion of Educational Benefits Impels Socio-Economic Gender Discrimination ... 21

2. Seizure of Appropriate Education from Gifted 22

On Point Parental Gifted Support 22

3. Oust Obsolete Constitutional Thinking ... 23

TABLE OF CONTENTS – Continued

Page

Freedom of Personal Choice 24

Equal Justice 24

4. Federal Duty to Uniformly Protect Minors 25

5. Internet and Local Release of Personal Info 26

Duty to Avert Disclosure 27

Entwinement 27

Armory of Congressional Powers 28

FFCCSOA and UIFSA Evolve From '92 Blueprint for Reform* 29

CONCLUSION 30

---

* **Uniform Interstate Family Support Act**: 42 U.S.C. §666(f) (*Effective date of 1/1/1998 for UIFSA to be enacted by each state, i.e. in Ohio, Emerg. Legis. Am. Sub. H.B. 352, eff. 1/1/1998 or before*). In order to satisfy section 654(20)(A) of this title, on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform State Laws.

TABLE OF AUTHORITIES*

Page

CASES

1) *ACLU v. Reno*, 217 F.3d 162, 168-169 (3rd Cir. Pa. 2000), *cert. granted, Ashcroft v. ACLU*, 121 S.Ct. 1997 (May, 2001) (COPA) 25, 26

2) *Adams v. Robertson*, 520 U.S. 83, 86, 117 S.Ct. 1028, 1029, 137 L.Ed.2d 203 (1997) (PER CURIAM) 4, 13

3) *Agostini v. Felton*, 521 U.S. 203, 235, 117 S.Ct. 1997, 2016, 138 L.Ed.2d 391 (1997) 23

4) *Allenberg Cotton Co., Inc. v. Pittman*, 419 U.S. 20, 23, 95 S.Ct. 260, 262, 42 L.Ed.2d 195 (1974) 4

5) *American Library Association v. Pataki*, 969 F. Supp. 160, 184 (S.D.N.Y. 1997) 26

6) *Arizona v. Evans*, 514 U.S. 1, 24, 115 S.Ct. 1185, 1198, 131 L.Ed.2d 34, (1995) (GINSBURG, dissent w/STEVENS) 26

7) *Bardes v. Bardes, (Priscilla Garrison Bardes v. Oliver Pape Bardes) Ham. City. Ct. C.P. 1974* (A-7401615) 8

8) *Barnett v. Barnett*, 1999 WL 64269, ___ (Tenn.Ct.App. Feb 01, 1999) *aff'd Barnett v. Barnett*, 27 S.W.3d 904 (Tn 2000) 22

9) *Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 550, 107 S.Ct. 1940, 1948, 95 L.Ed.2d 474 (1987) 13

10) *Board of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, 121 S.Ct. 955, 976, 148 L.Ed. 866 (2001) (BREYER, dissent) 29

---

* The notation in the brief (c/o) refers to (citation omitted).

TABLE OF AUTHORITIES – Continued

Page

11) *Boddie v. Connecticut*, 401 U.S. 371, 377-383, 91 S.Ct. 780, 785-789, 28 L.Ed.2d 113 (1971) 7, 21, 24

12) *Brentwood Academy v. Tennessee Secondary School Athletic Ass'n*, 531 U.S. 288, 121 S.Ct. 924, 930-931 (2001) 27

13) *Broadley v. Meridien Board of Education*, 229 Conn. 1, 639 A.2d 502 (Ct. 1994) 22

14) *Burns v. Ohio*, 360 U.S. 252, 254-257, 79 S.Ct. 1164, 3 L.Ed.2d 1209 (1959) 28

15) *Caldwell v. Mississippi*, 472 U.S. 320, 327-328, 105 S.Ct. 2633, 2638-2639, 86 L.Ed.2d 231 (1985) 6

16) *Centennial School Dist. v. Commonwealth Dept of Educ*, 517 Pa. 540, 539 A.2d 785 (Pa. 1988) 22

17) *Childrens and Parents Rights Ass'n of Ohio, Inc. (CAPRA) v. Sullivan*, 787 F. Supp. 738, 739 (U.S. Dist. Ct., N.D. Ohio, Eastern Div., 1992) 25

18) *Clark v. Jeter*, 486 U.S. 456, 457, 108 S.Ct. 1910, 1912, 100 L.Ed.2d 465 (1988) 18

19) *Coleman v. Thompson*, 501 U.S. 722, 737, 111 S.Ct. 2546, ___, 115 L.Ed.2d 640 (1991) 6

20) *College Savings Bank v. Florida Prepaid Post-secondary Educ. Expense Bd.*, 527 U.S. 666, 691, 119 S.Ct. 2219, 2233, 144 L.Ed.2d 605 (STEVENS, dissent) (1999) 27

21) *Committee for Public Education v. Nyquist*, 413 U.S. 756, 782, n. 38, 93 S.Ct. 2955, 37 L.Ed.2d 948 (1973), (*also* *788, **2973) 13

TABLE OF AUTHORITIES – Continued

Page

22) *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 496, 95 S.Ct. 1029, 1047 (1975)..... 27

23) *Curtis v. Klein*, 542 Pa. 249, 666 A.2d 265 (1995) (*declined to follow NH's LeClair* at *260, **270)..... 16

24) *Curtis v. Kline*, 542 Pa. 249, 262-268, 666 A.2d 265, 271-274 (Pa., 1995) (*excellent dissent*)..... 23

25) *Delaware v. Prouse*, 440 U.S. 648, 653-655, 99 S.Ct. 1391, 1396-1397, 59 L.Ed.2d 660 (1979) (objective reasonableness standards)..... 19

26) *Dellmuth v. Muth*, 491 U.S. 223, ___, 109 S.Ct. 2397, 2399, 105 L.Ed.2d 181 (1989)..... 22

27) *Dept. of Banking of Nebraska v. Pink*, 317 U.S. 264, 266-267, 63 S.Ct. 233, 87 L.Ed. 254 (1942)..... 4

28) *DeRolph v. State*, 83 Ohio St. 3d 1208, 1210, 699 N.E.2d 516 (Oh 1998)..... 25

29) *DeSylva v. Ballentine*, 351 U.S. 570, 583, 76 S.Ct. 974 (1956) (DOUGLAS, concurring)..... 25

30) *Dickerson v. U.S.*, 530 U.S. 428, 438-439, 120 S.Ct. 2326 (2000)..... 25

31) *Egelhoff v. Egelhoof ex rel Breiner*, 121 S.Ct. 1322, 1330, 149 L.Ed.2d 264 (2001)..... 28

32) *Esteb v. Esteb*, 138 Wash. 174, 178-184, 244 P. 264, 265-267 (en banc, 1926) *opin, supplemented/rehg.*, 138 Wash. 174, 246 P. 27 (Wash. May 24, 1926) (father died, estate relieved)..... 23

TABLE OF AUTHORITIES – Continued

Page

33) *Estin v. Estin*, 334 U.S. 541, 544, 68 S.Ct. 1213, 1215, 92 L.Ed. 1561, 1561 (1948) (Also *548, **1218) 20

34) *Everson v. Board of Ed. of Ewing Tp.*, 330 U.S. 1, 48, 67 S.Ct. 504, 527, 91 L.Ed. 711 (1947) 22

35) *Ex parte Bayliss*, 550 So.2d 986, 991-995 (1989 AL) (equal prot denied), with appeal after remand *Bayliss v. Bayliss*, 575 So.2d 1117, Ala.Civ.App., 1990, *cert. denied by Ex parte Bayless II*, 575 So.2d 1122 (order dates back to request date)..... 23

36) *FERC v. Mississippi*, 456 U.S. 742, 764-765, 102 S.Ct. 2126, 2140, 72 L.Ed.2d 532 (1982) 29

37) *Frontiero v. Richardson*, 411 U.S. 677, 685, 93 S.Ct. 1764, 1770, 36 L.Ed.2d 583 (1973) 16, 21

38) *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 554, 105 S.Ct. 1005, 1019, 83 L.Ed.2d 1016 (1985)..... 28

39) *Ginsberg v. State of New York*, 390 U.S. 629, 639, 88 S.Ct. 1274, 1280, 20 L.Ed.2d 195 (1968) 17

40) *Gomez v. Perez*, 409 U.S. 535, 538, 93 S.Ct. 872, 875, 35 L.Ed.2d 56 (1973)..... 17

41) *Graham v. Connor*, 490 U.S. 386, 395, 109 S.Ct. 1865, 1871, 104 L.Ed.2d 443 (1989) 24

42) *Gregory v. Ashcroft*, 501 U.S. 452, 460-461, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991)..... 28

TABLE OF AUTHORITIES – Continued

Page

43) *Greidinger v. Davis*, 988 F.2d 1344, 1353-1354 (4th Cir. 1993) 27

44) *Griffin v. Illinois*, 351 U.S. 12, ___, 76 S.Ct. 585, ___ 100 L.Ed. 891 (1956)..... 25

45) *Griswold v. Connecticut*, 381 U.S. 479, 484-485, 85 S.Ct. 1678, 1681-1682, 14 L.Ed.2d 510 (1965) 381 U.S. at 495, 85 S.Ct. 1687 (GOLDBERG, concurring) 20, 27

46) *Hardisty v. Hardisty*, 183 Conn. 253, 262-265, 439 A.2d 307 (Cn. 1981)..... 23

47) *Harper v. Virginia Bd. Of Elections*, 383 U.S. 663, 666, 86 S.Ct. 1079, 1081, 16 L.Ed.2d 169 (1966) 22

48) *Harris v. Reed*, 489 U.S. 255, 261-262, 109 S.Ct. 1038, 1042, 103 L.Ed.2d 308 (1989); also at *267, **1045-1046 (STEVENS, concurring) 6, 26

49) *Harris v. Rivera*, 454 U.S. 339, 345, 102 S.Ct. 460, 464, 70 L.Ed.2d 530 (1981) 26

50) *Haxton v. Haxton*, 299 Or. 616, 705 P.2d 721 (Or. 1985)..... 22

51) *Healy v. James*, 408 U.S. 169, 197, 92 S.Ct. 2338, 2354, 33 L.Ed.2d 266 (1972)..... 15

52) *Heights Comm. Congess v. Veteran's Admin.*, 732 F.2d 526 (6th Cir. 1984) 27

53) *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 288-289, 101 S.Ct. 2352, 2366 (1981) 29

TABLE OF AUTHORITIES – Continued

Page

54) *Howlett v. Rose*, 496 U.S. 356, 372-373, 110 S.Ct. 2430, 2439+ (?), 110 L.Ed.2d 332 (1990) 25

55) *In re Marriage of Kohring*, 999 S.W.2d 228, 231-234 (Mo. 1999)..... 23

56) *J.D. ex rel. J.D. v. Pawlet School Dist.*, 224 F.3d 60, 65, 147 Ed. Law Rep. 39 (2nd Cir. (Vt.) Aug 15, 2000) 22

57) *Kallstrom v. City of Columbus*, 136 F.3d 1055, 1062, 1067 (6th Cir. 1998)..... 27

58) *Katz v. United States*, 389 U.S. 347, 353, 88 S.Ct. 507, 512, 19 L.Ed.2d 576 (1967) (HARLAN, concurring) 19, 20

59) *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 81, 120 S.Ct. 631, 644 (2000).....7, 28

60) *Kyllo v. United States*, 533 U.S. ___, 121 S.Ct. 2038, 2045 (June 11, 2001) 20, 23, 26

61) *LeClair v. LeClair*, 137 N.H. 213, 225, 624 A.2d 1350, 1357, 82 Ed. Law Rep. 1120 (1993) 15, 23

62) *Lewis v. Casey*, 518 U.S. 343, 404-405+, 116 S.Ct. 2174, 2206+, 135 L.Ed.2d 606 (1996) (STEVENS, dissent) 25

63) *Lunding v. New York*, 522 U.S. 287, 118 S.Ct. 766, 139 L.Ed.2d 717 (1998)..... 18

64) *M.L.B. v. S.L.J.*, 519 U.S. 102, 116, 117 S.Ct. 555, 564, 136 L.Ed.2d 473 (1996).....19, 25

65) *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961)..... 19

TABLE OF AUTHORITIES – Continued

Page

66) *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 340-41 (1816) 25

67) *Martinez v. Bynum*, 461 U.S. 321, 346, FN14, 103 S.Ct. 1838, 1852, FN14, 75 L.Ed.2d 879 (1983) (MARSHALL, dissent) 18

68) *Mayer v. Chicago*, 404 U.S. 189, 197, 92 S.Ct. 410, 416, 30 L.Ed.2d 372 (1971) 20, 24

69) *McCulloch v. Maryland*, 17 U.S. 316 (4 Wheat) (1819)..... 29

70) *McMillian v. Monroe Cty Alabama*, 520 U.S. 781, 798, 117 S.Ct. 1734, 1743 (1997) (GINSBURG, J. dissent) 27

71) *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 255+, 94 S.Ct. 1076, 1081+, 39 L.Ed.2d 306, 306+ (1974) 22, 27

72) *Meyer v. Nebraska*, 262 U.S. 390, 400, 43 S.Ct. 625, 627, 67 L.Ed. 1042 (1923) 15, 18, 19, 22

73) *Michigan v. Long*, 463 U.S. 1032, ___, 103 S.Ct. 3469, ___, 77 L.Ed.2d 1201 (1983) 6

74) *Middlebury College v. Chandler*, 16 Vt. 683, at *2, 42 Am. Dec. 537 (Vt. 1844) 23

75) *Miller v. Albright*, 523 U.S. 420, 482-483, 118 S.Ct. 1428, 1460-1461, 140 L.Ed.2d 575 (1998) 21

76) *Mississippi University for Women v. Hogan*, 458 U.S. 718, 102 S.Ct. 3331, 73 L.Ed.2d 1090 (1982) 18

TABLE OF AUTHORITIES – Continued

Page

77) *Mitchell v. Helms*, 120 S.Ct. 2530, 2541 (2000) 14, 22

78) *Mitchell v. Mitchell* (1960) 170 Ohio St. 507, 166 N.E.2d 396, *syllabus two** 23

79) *Mueller v. Allen*, 463 U.S. 388, 400, 103 S.Ct. 3062, 77 L.Ed.2d 721 (1983) 14

80) *Nash v. Mulle*, 846 S.W.2d 803, 806-810 (Tn. 1993) 23

81) *New Jersey v. T.L.O.*, 469 U.S. 325, 348, 105 S.Ct. 733, 746, 83 L.Ed.2d 720 (1985) 17

82) *New York v. United States*, 505 U.S. 144, 179, 112 S.Ct. 2408, 2430, 120 L.Ed.2d 120, 152 (1992) 25

83) *Newburgh v. Arrigo*, 88 N.J. 529, 543-545, 443 A.2d 1031, 1037-1038, 42 A.L.R. 4th 795 (N.J. 1982) 23

84) *Nunnery v. Florida*, 102 F. Supp. 2d 772, 776 (E.D.Mich. Jun. 30, 2000) 29

85) *O'Connor v. Ortega*, 480 U.S. 709, 731, 107 S.Ct. 1492, 1504 (1987) (SCALIA, concurring) 24

86) *Olmstead v. United States*, 277 U.S. 438, 478, 48 S.Ct. 564 (Mem) (1928) (BRANDEIS, dissent) 27

---

* (Cert. Copies of *Mitchell's* original filings, re-filed in *Bardes*, 1/19/99, T.d. 247-252, duration of order compelling Mitchell dad to pay 50% of *four* yrs of college each for *five* kids could not have ceased prior to attainment of former general age of majority 21 yrs.)

TABLE OF AUTHORITIES – Continued

Page

87) *Oregon v. Mitchell*, 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed.2d 272 (1970)* 15

88) *Orr v. Orr*, 440 U.S. 268, 279-280, 99 S.Ct. 1102, 1111-1112, 59 L.Ed.2d 306 (1979) 22

89) *Oyama v. California*, 332 U.S. 633, 68 S.Ct. 269, 92 L.Ed. 249 (1948) (BLACK, concurring) 23

90) *Paul v. Virginia*, 8 Wall. 168, 180, 19 L.Ed. 357 (1868) 18

91) *Pellish v. Gerhart*, 701 A.2d 594, 597 (PA Sup. Ct., Nov. 4, 1997) 23

92) *Personnel Adm'r of Massachusetts v. Feeney*, 442 U.S. 256, 275, 99 S.Ct. 2282, ___, 60 L.Ed.2d 870 (1979) 21

93) *Pierce v. Society of Sisters*, 268 U.S. 510, 535, 45 S.Ct. 571, 573, 69 L.Ed. 1070 (1925) 15, 19

94) *Plyler v. Doe*, 457 U.S. 202, 220, 102 S.Ct. 2382, ___, 72 L.Ed.2d 786 (1982) 18

95) *Poe v. Ullman*, 367 U.S. 497, 551-552, 81 S.Ct. 1752, 1781, 6 L.Ed.2d 989 (1961) (HARLAN, dissent) 20

96) *Prince v. Massachusetts*, 321 U.S. 158, 166, 64 S.Ct. 438, 442, 88 L.Ed. 645 (1944) 6

97) *Reed v. Reed*, 404 U.S. 71, 76, 92 S.Ct. 251, 254, 30 L.Ed.2d 225 (1971) 21

---

* [superseded with respect to minimum age by U.S. Const. Amendment XXVI, *Hale v. Mann*, 219 F.3d 61, 69 (May 25, 2000)]

TABLE OF AUTHORITIES – Continued

Page

98) *Reno v. Condon*, 528 U.S. 141, 120 S.Ct. 666, ___, 145 L.Ed. 587 (2000) 12, 23, 26, 27, 28, 29

99) *Roe v. Wade*, 410 U.S. 113, 152, 164, 169, 93 S.Ct. 705, 726, 732, 735, 35 L.Ed.2d 147 (1973) 18, 19, 24

100) *Runyon v. McCrary*, 427 U.S. 160, 178, N. 15, 96 S.Ct. 2586, 2598, N. 15, 49 L.Ed.2d 415 (1976) 17, 24, 26

101) *Saenz v. Roe*, 526 U.S. 489, 528, 119 S.Ct. 1518, 1538, 143 L.Ed.2d 689 (1999) (THOMAS, dissent w/REHNQUIST, C.J.) 19, 23

102) *Saliba v. Saliba*, 753 So.2d 1095, 1102-1103, 143 Ed. Law Rep. 670 (Miss. 2000) 23

103) *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1, 115, 93 S.Ct. 1278, 1339, 36 L.Ed.2d 16 (1973) (MARSHALL, dissent) 11, 16

104) *School Committee * * * v. Dept. of Educ. of Mass.*, 471 U.S. 359, 372, 105 S.Ct. 1996, 2004, 85 L.Ed.2d 385 (1985) 22

105) *Semtek Intern, Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 121 S.Ct. 1021, 1028, 149 L.Ed.2d 32 (2001) 25

106) *Shalala v. Illinois Council on Long Term Care, Inc.*, 529 U.S. 1, 18, 120 S.Ct. 1084, 1096, 146 L.Ed.2d 1 (2000) 19

107) *Simmons-Harris v. Zelman*, 234 F.3d 945, 952-961, 149 Ed. Law Rep. 691 (6th Cir. (Ohio) Dec. 11, 2000), (3) Petitions for Certiorari May 23, 2001, No. 00-1751+ 13, 19

TABLE OF AUTHORITIES – Continued

Page

108) *Sosna v. Iowa*, 419 U.S. 393, 404, 95 S.Ct. 553, 559-560, 42 L.Ed.2d 532 (1975)..... 28

109) *South Carolina v. Baker*, 485 U.S. 505, 514-515, 108 S.Ct. 1355 (1988)..... 27

110) *South Dakota v. Dole*, 483 U.S. 203, 206-208, 107 S.Ct. 2793, 2796 (1987)..... 29

111) *Stanford v. Texas*, 379 U.S. 476, 481, 85 S.Ct. 506, 509, 13 L.Ed.2d 431 (1965)..... 19

112) *Stanton v. Stanton*, 421 U.S. 7, 11, 16, 95 S.Ct. 1373, 43 L.Ed.2d 688 (1975)..... 7, 15, 22

113) *Stanton II*, 429 U.S. 501, 503, 97 S.Ct. 717, 718, 50 L.Ed.2d 723 (1977)*..... 7

114) *Sullivan v. Stroop*, 496 U.S. 478, 482, 110 S.Ct. 2499, 2503, 110 L.Ed.2d 438 (1990)..... 18

115) *Sweatt v. Painter*, 339 U.S. 629, 634-635, 70 S.Ct. 848, 850, 94 L.Ed. 1114 (1950).....19, 20

116) *Thompson v. Oklahoma*, 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988) (SCALIA, dissent)..... 15

117) *Tilton v. Richardson*, 403 U.S. 672, 91 S.Ct. 2091, 29 L.Ed.2d 790 (1971)..... 13

118) *Trimble v. Gordon*, 430 U.S. 762, 770, 97 S.Ct. 1459, 1465, 52 L.Ed.2d 31 (1977)..... 18

---

* (males and females cannot be treated differently for child support purposes consistently with the Equal Protection Clause)

TABLE OF AUTHORITIES – Continued

Page

119) *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000), i.e. *120 S.Ct. at 2072 and FN 8* (STEVENS, dissent), *120 S.Ct. at 2075* (SCALIA, dissent), 120 S.Ct. *at 2067* (THOMAS, concurring), 120 S.Ct. at 2076 (KENNEDY, dissent) 17, 18, 19

120) *United States v. Butler*, 297 U.S. 1, 66, 56 S.Ct. 312, 319, 80 L.Ed. 477 (1936)..... 29

121) *United States v. Faasee*, 227 F.3d 660 (6th Cir. (Mich.) Sept. 25, 2000), rehearing granted (Dec. 1, 2000)..... 25

122) *United States v. Kramer*, 225 F.3d 847, 855 (Sept. 5, 2000) (7th Cir. Ind.)..... 29

123) *United States v. Morrison*, 529 U.S. 598, 120 S.Ct. 1740 (2000) (BREYER, Part I-A, dissent)..... 28

124) *United States v. Lopez*, 514 U.S. 549, 558, 115 S.Ct. 1624, 1629, 131 L.Ed.2d 626 (1995) 29

125) *United States v. Virginia*, 518 U.S. 515, 548, 116 S.Ct. 2264, 2283, 135 L.Ed.2d 735 (1996) 20

126) *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 652-653, 115 S.Ct. 2386, 2390 (1995)..... 24

127) *Vlandis v. Kline*, 412 U.S. 441, 93 S.Ct. 2230, 37 L.Ed.2d 63 (1973) 15

128) *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175, 92 S.Ct. 1400, 1407, 31 L.Ed.2d 768 (1972) 17, 21

129) *Whalen v. Roe*, 429 U.S. 589, 598-600, 605, 97 S.Ct. 869, 875-877, 879 (1977).. 24, 26, 27, 28

TABLE OF AUTHORITIES – Continued

Page

130) *Wickard v. Filburn*, 317 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122 (1942) 29

131) *Wisconsin v. Yoder*, 406 U.S. 205, 213, 92 S.Ct. 1526, 1532, 32 L.Ed.2d 15 (1972), and 406 U.S. at 243-245, 92 S.Ct. 1526, 1547-1548, (*DOUGLAS, dissent*) 14, 17

132) *Yarborough v. Yarborough*, 290 U.S. 202, 220-222, 54 S.Ct. 181, 188-189 (1933) (STONE, J., dissent) 16

133) *Ylst v. Nunnemaker*, 501 U.S. 797, 801, 111 S.Ct. 2590, 2593, 115 L.Ed.2d 706 (1991) 6

134) *Zablocki v. Redhail*, 434 U.S. 374, 388+, 397, 399-400, 98 S.Ct. 673, 682+, 687, 54 L.Ed.2d 618 (1978) 7, 21, 24

135) *Zurcher v. Stanford Daily*, 436 U.S. 547, 98 S.Ct. 1970, 1981, 56 L.Ed.2d 525 (1978) 19

FEDERAL CONSTITUTIONAL PROVISIONS

Article I, §8, cl. 1, cl. 3, cl. 18 ..... 4, 12

Article I, §10 4

Article IV, §1 ..... 4, 12

Article IV, §2 ..... 4, 12, 18

Article VI, cl. 2 ..... 4, 12

First Amendment 4, 11, 19, 20, 21, 28

Fourth Amendment 4, 19, 20, 21, 24, 27, 28

Ninth Amendment 4, 21

Fourteenth Amendment, §1, §5 ..... *passim*

Twenty-Sixth Amendment, §1, §2 ..... 4, 11, 12, 15, 23

TABLE OF AUTHORITIES – Continued

Page

STATUTES

Federal

5 U.S.C. §551 ..... 4, 26
5 U.S.C. §552a 4, 26, 27, 28
20 U.S.C. §§1400-1485 ..... 5, 22, 26
26 U.S.C. §529 ..... 4, 10, 11, 12, 26, 27
28 U.S.C. §1257(a) 3
28 U.S.C. §1738B 4, 18, 21, 26, 29
28 U.S.C. §2403(a), (b) 4
42 U.S.C. §405 ..... 4, 26
42 U.S.C. §§651, *et seq.* 4, 26
42 U.S.C. §666(f) 30

Ohio Revised Code

§149.43 ..... 5, 28
§2303.03 ..... 5, 28
§2303.08 ..... 5, 28
§2303.26 ..... 5, 28
§2303.31 ..... 5, 28
§3103.03 ..... 5, 21
§3105.011 5
§3105.10 ..... 5, 21
§3105.171 5
§3105.21 ..... 5, 21

TABLE OF AUTHORITIES – Continued

Page

§3105.61 5
§3105.63 5
§3105.65 ..... 5, 21
§3109.01 ..... 5, 9, 21
§3109.03 ..... 5, 10, 21
§3109.04 ..... 5, 10, 21
§3109.05 5
§3109.401 ..... 5, 10, 21
§3113.21 ..... 5, 21
§3113.215 ..... 5, 9, 21
§3119.05 ..... 5, 9, 21
§3119.24 5
§3119.82 5
§3119.86 ..... 5, 21
§3119.88 ..... 5, 21

(See Appendices for discussion of statutes and rules.)

RULES

Fed. R.C.P. 23(B)(2), (3) 5
Fed. R.C.P. 23(C)(4) 5
App. R. 30 5
Ohio Civ. R. 7 5
Ohio Civ. R. 23 5
Ohio Civ. R. 23(C)(4)(A) 5
Ohio Civ. R. 53 5

TABLE OF AUTHORITIES – Continued

Page

PUBLICATIONS

1) 27 J.L. & Educ. 131 Journal of Law and Education, January 1998, "Gifted Students And The Right To An Ability-Appropriate Education," Anne Scholtz Heim 22

2) "Curtis v. Kline: The Pennsylvania Supreme Court Declares Act 62 Unconstitutional – A Triumph for Equal Protection Law", by Hon. Vincent A. Cirillo, 34 Duq. L.Rev. 471, Spring, 1996 .....16, 23

3) "A Matter of Interpretation, Federal Courts and the Law", by Justice Antonin Scalia, 1997, Princeton University Press, p. 12, FN10 30

4) Child Support Guidelines: Interpretation and Application, 1997 Supplement, by Laura Morgan, Aspen Law & Business, §4.05, pp. 4-21-4-30 29

5) "Privacy and Access to Electronic Case Files in the Federal Courts," Dec. 15, 1999, Office of Judges Programs of Administrative Office of U.S. Courts, Robert Deyling, 202/502-1858..... 26

6) *The Unexpected Legacy of Divorce,* Hyperion, New York City (212/456-0172), ISBN 0-7868-6394-3, Judith S. Wallerstein, Ph.D, Julia Lewis, Ph.D, Sandra Blakeslee, and such book's underlying study, *"The Long Term Impact of Divorce on Children, A First Report from a 25 year Study,"* Judith S. Wallerstein, Ph.D, Julia Lewis, Ph.D (Prof. Psychology, San Francisco State Univ.)..... 30

7) U.S. Commission On Interstate Child Support, *Supporting Our Children: A Blueprint for Reform* (1992) 29

PETITION FOR WRIT OF CERTIORARI

Petitioner, Dee Ellen Bardes, together with the minor sons, respectfully pray that a Writ issue to review an intermediate state court's Opinion, recognizing *time-bound, interlocutory* appeals of state courts' refusal to issue Certificates of Federal Jurisdiction persist (Apps. 332, 336, 338, 428); avail sua sponte relief.

OPINIONS BELOW

Merits: This important petition, *enables a landmark civil privacy expectations precedent*, to arise from deprivation of federal rights, *Bardes v. Todd* (App. 1 Dist, C-000055, October 13, 2000) 139 Ohio App. 3d 938, 746 N.E. 2d 229. Authored by highly respected, The Honorable Mark P. Painter, writing for The Court of Appeals, First Appellate District of Ohio, Hamilton County ("First District"), such Opinion and Entry are reproduced as App. 1-12. On November 3, 2000, First District denied a motion for reconsideration, reproduced as App. 13-14; on December 1, 2000, First District denied a motion for stay and application for reconsideration, reproduced as App. 15. Then, the Supreme Court of Ohio (SCO), denied a motion for stay on December 20, 2000, reproduced as App. 259, followed by a denial of the petition for writ of certiorari on February 14, 2001, reproduced as App. 260. Lastly, SCO denied an application for reconsideration on April 4, 2001, which Reconsideration Entry, is reproduced as App. 261. The Honorable Penelope R. Cunningham, expertly presided, 1995-1999, over the complex trial court proceedings in Hamilton County Court of Common Pleas,

Division of Domestic Relations, 1994-1999, DR9402798, as aided by Magistrate William Murphy. Trial orders (94-99) span App. 16-256 (2001), App. 331-333.

Certificates of Federal Jurisdiction: **SCO-01-1231** (July 6, 2001 appeal of First District's refusal, striking request due to no state procedural rule) (App. 338); **C-01-0498**, (July 27, 2001 appeal of Trial Court's July 24, 2001 refusal, lack of jurisdiction to issue findings, et al. related to federal claims, dismissed) (App. 332, 428); **SCO-00-2117** (July 26th, 2001 denial of July 20, motion for stay/vacate of July 16 denial of July 12 motion seeking compliance with federal rules, fed. common law, SCO Cert.) (App. 336, 335).

Earlier Ancillary: A pre-merits appeal was perfected, **SCO-00-545**, of First District's refusal to determine the merits sitting *en banc*, and refusal to certify *vivid* intra-state conflicts; SCO denied, reproduced as App. 265. In **SCO-2254**, First District refused to certify (App. 13-14), extensive conflicts on the merits; SCO claimed a procedural defect, (failing to file a physical memorandum in support of jurisdiction, despite legal incorporation of the one in SCO-00-2117, memos). (App. 262-264)

CITATIONS

The reported citation for the merits on review is: *Bardes v. Todd*, 139 Ohio App. 3d 938, 746 N.E. 2d 229 (App. 1 Dist, C-000055, October 13, 2000), motion for stay denied by *Bardes v. Todd*, 90 Ohio St.3d 1492, 739 N.E.2d 817 (Ohio Dec 20, 2000) (TABLE, No. 00-2117), appeal not allowed by *Bardes v. Todd*, 91 Ohio St.3d 1445, 742 N.E.2d

144 (Ohio Feb 14, 2001) (TABLE, No. 00-2117), and reconsideration denied by *Bardes v. Todd*, 91 Ohio St.3d 1484, 744 N.E.2d 1196 (Ohio Apr 04, 2001) (TABLE, No. 00-2117).

Certificates: **SCO:00-2117,** *inter alia*, Certificates of Federal Jurisdiction, denied, *Bardes v. Todd*, 92 Ohio St.3d 1439, 750 N.E.2d 1121 (Ohio July 16, 2001) (TABLE, No. 00-2117), and **Stay Denied by** *Bardes v. Todd*, 92 Ohio St.3d 1453, 751 N.E.2d 488 (**Ohio Jul. 26, 2001**) (TABLE, No. 00-2117).

Earlier Ancillary: [**SCO:00-2254** failure to certify conflicts] mot. for stay denied, *Bardes v. Todd*, 91 Ohio St.3d 1411, 740 N.E.2d 1111 (Ohio Jan 17, 2001) (TABLE, No. 00-2254), dismissed *Bardes v. Todd*, 91 Ohio St.3d 1454, 742 N.E.2d 658 (Ohio Feb 22, 2001) (TABLE, No. 00-2254), motion for reconsideration denied, *Bardes v. Todd*, 91 Ohio St.3d 1468, 744 N.E.2d 190 (Ohio Mar 19, 2001) (TABLE, No. 00-2254). [**SCO:00-545**, en banc determination] mot. for stay denied, *Bardes v. Todd*, 88 Ohio St.3d 1485, 727 N.E.2d 134 (Ohio Apr 19, 2000) (TABLE, No. 00-545), *appeal not allowed, Garrison Bardes v. Todd*, 89 Ohio St.3d 1425, 729 N.E.2d 1196 (Ohio Jun 14, 2000) (TABLE, No. 00-545).

JURISDICTION

Jurisdiction of this Court is timely invoked under 28 U.S.C. §1257(a) to enable federal review of an October 13, 2000 Opinion of an intermediate state court of last resort. Time is calculated (S.C. Rule 13.1, 13.3) from SCO's April 4, 2001 Reconsideration Entry (App. 261), following which two thirty-day extensions were graciously granted

on June 12, 2001 (App. 341-342), and July 18, 2001 (App. 343-344), by The Honorable John Paul Stevens extending time (S.C. Rule 13.5) through September 1, 2001. See *Dept. of Banking v. Pink*, 317 U.S. 264, 266-267 (1942), re: Certificate efforts, *Allenberg v. Pittman*, 419 U.S. 20, 23 (1974), to fulfill burden of proof, *Adams v. Robertson*, 520 U.S. 83, 117 S.Ct. 1028 (1997), does not alter finality.

Rule 29.4(b-c) Statement: Three prospective interveners were notified, that 28 U.S.C. §2403(a), (b) may be applicable; such notification made via initial document filed, A-1084.

UNITED STATES CONSTITUTIONAL PROTECTIONS VIOLATED

Article I, Section 8, clause 1, clause 3, clause 18; Article I, Section 10, clause 1; Article IV, Section 1; Article IV, Section 2; Article VI, clause 2; First Amendment; Fourth Amendment; Ninth Amendment; Tenth Amendment; Fourteenth Amendment, §1 (Citizenship, Privileges or Immunities, Due Process, Equal Protection clauses); §5; Twenty-Sixth Amendment, §1, §2.

FEDERAL PRIVACY EXPECTATIONS INTRUDED

5 U.S.C. §551; 5 U.S.C. §552a, The Privacy Act of 1974; §552a note, including uncodified Section 7(a), (b) with Pub. L. 93-579; 26 U.S.C. §529; 28 U.S.C. §1738B with Pub.L 103-383; 28 U.S.C. §2403(a-b); Title IV, Social Security Act, 42 U.S.C. §§651, *et seq.*; 42 U.S.C. §405, Pub.L. 93-579; Section 9, Pub.L. 100-503; Section 7 of Pub.L.

93-579; Individuals with Disabilities Educ. Act, 20 U.S.C. §§1400-1485.

RELATED RULES

Fed. R.C.P. 23(B)(2), (3); Fed. R.C.P. 23(C)(4); App. R. 30; Ohio Civ. R. 7; Ohio Civ. R. 23; Ohio Civ. R. 23(C)(4)(A); Ohio Civ. R. 53.

UNCONSTITUTIONAL OHIO STATUTES CHALLENGED[4]

Ohio Revised Code §§149.43; §2303.03; §2303.08; §2303.26; §2303.31; §3103.03; §3105.011; §3105.10; §3105.171; §3105.21; §3105.61, §3105.63; §3105.65; §3109.01; §3109.03; §3109.04; §3109.05; §3109.401; §3113.21; §3113.215; §3119.05; §3119.24; §3119.82; §3119.86; §3119.88, et al.; also all former and current Title 31, and other relevant provisions.

STATEMENT OF CASE

Intrusions on Privacy Expectations. With "deep conviction" (App. 2), Petitioner and her sons vigorously objected to *civil intrusions* by Ohio and its agent, The Hamilton

[4] A major rewrite and fathers' bill, Senate Bill 180, effective 3/22/01, altered or repealed §§3113.21, 3113.215, 3103.03, 3105.21, 3109.05, et al. resulting in two or more different versions of Title 31 being challenged. Chapter 3119 is newly enacted. See Appendices.

County Clerk of Courts, into their "**private realm of family life**," *Prince v. Massachusetts*, 321 U.S. 158, 166, throughout *seven* years in courts. The sons' best interests have been sacrificed along with Mother's. Inter alia, *First*, the *entwined* court clerk's release of litigants' personal information and *papers* entrusted to the state, locally and via the Internet violates society's reasonable privacy expectations (App. 287, 292, 317-318, 320, 324-325, 425). Although, the record was *not sealed* (App. 8, 160, 162-164), several of fathers' family trusts, unfunded and funded were.

The Opinion's ambiguity (App. 7-8) inter alia as to reliance on an inadequate trial motion procedural (App. 367, 375-378) defect implores application of 'expiration,' *Ylst v. Nunnemaker*, 501 U.S. 797, 801, *Michigan v. Long's* federal presumption, *Harris v. Reed* at *262, **1042, *Caldwell v. Mississippi* at *328, **2639, *Cf. Coleman v. Thompson*, 501 U.S. 722, 737, and effects a *Second* intrusion. *Third*, Certificates of Federal Jurisdiction, have been sought but railroaded, again unduly burdening costs and access to federal review. (App. 328-329, 331-333, 335-336, 338, 341, 343, 428), necessitating treating the as yet unwritten second motion for stay as a writ; (App. 336) *better yet, mercifully grant sua sponte relief in time-bound interlocutory federal jurisdiction appeals (Pet. p. 2-3).*

Fourth, the state blatantly *seized* (App. 144, #6; 145, 2nd para; 150, #6) original and continuing jurisdiction over federal tax benefits arising from the marriage, upheld, App. 3-5, which had been *immutably* allocated as *property* via a 1997 out-of-court contract. The court's 1999 characterization as "support" emplaced such same provisions for federal child tax credits (App. 101, #12.4; 42, #10.2), and same provisions for federal tax dependency

exemptions (App. 99-101, #12.3-12.3.3; 40-42, #10.1-10.1.3) under the modification jurisdiction of the court (App. 17, #3; 49, #15.1; 144, #6-145). Altering the duration of benefits agreed as paralleling the I.R.S.' duration of dependency (i.e., age 25+) (App. 99, #12.3; 101, #12.3.2; 40, #10.1; 42, #10.1.2), left years in limbo (18+). See App. 410-414.

Fifth, Ohio grossly mishandled educational *effects*, in nexus with the exercise of a constitutional right to terminate a marriage with children [*Zablocki, Boddie**], arbitrarily searching or seizing personal freedoms, equal rights, educational benefits, et al. Cursed via whims of state officials in the field, *an unallocated educational burden was disparately dumped on Mother*, effecting Equal Protection **Socio-Economic and Gender Discrimination in the Duty to Educate**, as frowned upon in *Stanton I, II*. Disparate denial of access to courts' authority and jurisdiction (App. 266, 276, 388, 390, 399) for college support orders *between brothers* (Pet. p. 9) and multiple legislative classifications (App. 389, 392) effected separate *Sixth and Seventh+* intrusions. Educational Discrimination negatively effects political participation violating First, Fourteenth, and Twenty-Sixth Amendments, and Equal Protection Age Discrimination was not foreclosed by *Kimel, Gregory*.

Eighth, by refusing (App. 7) to certify class action status, the state trounced on availing relief needed by the proposed class of Ohio Mothers against these same intrusions against their families and children. *Ninth*, and others *infra*.

**Boddie v. Connecticut*, 401 U.S. 371, 377-378, 91 S.Ct. 780, 785-789, 28 L.Ed.2d 113 (1971).

Mother wore children's shoes: Such injustices perpetuated on *women and children* nationwide via states' antics is Petitioner's *raison d'etre* for advancing this *landmark* case, as fueled via her personal saga; as the *third* generation of her paternal family to be divorced by Hamilton County, Ohio courts, 45 yr. old Petitioner endured ravages of multigenerational divorces, including *her* dad's 1974-1978 refusal to pay *her* undergraduate expenses. Only via *her* mom's strength to obtain a court order [*Priscilla Garrison Bardes v. Oliver Pape Bardes*, Ham. Cty. Ct. C.P. 1974 A-7401615] enforcing *her parents' separation agreement* did *her* college studies continue, and Petitioner's quarterly crying in the sorority house phone booth cease, as each parent said to call the other parent to pay her bills. Here, *another generation of fathers' refusal to pay educational bills* must be nixed.

Neutral Private Choice: Via **Free Exercise Of Individual Ohio Parents' School Choice** (App. 182-185), the *highly-gifted,* Todd brothers, commenced their formal education at Summit Country Day, their Cincinnati neighborhood private school, about age three, (App. 182; 218) leaving earlier church schools behind. They continued [App. 40, #9.2] their education at Summit *with tuition/fees mounting annually 1994-2001 to total approx. $100,000.00+.* Summit is Catholic-oriented, although *neither* party is Catholic [App. 36, #7.1]. Throughout *original* divorce proceedings, where educational support disputes dominated (Apps. 183, 187, 217, 228), findings held that Father continually *refused* (Apps. 183, 236-237), and paid *no amount* (App. 184) towards schooling.

No Order: According to First District (App. 10), it was due to adoption (App. 68-69) of the Magistrate's Decision (App. 235-238), that no educational support order issued

(App. 10-11): noticeably, none in the parenting plan (App. 39-40), nor as a separate educational support order (App. 71, #7), nor as a deviation within Father's $15,000.00 (fifteen thousand) per year (both sons) "support obligation" (App. 149, 150, #5). Mother argued (App. 9-11) an educational order was made as a subset of the standing allocation order, R.C. §3113.215(B)(5)(f) [intact as R.C. §3119.05(F), App. 407], since legislatively defined [§3113.215(A)(12), intact as §3119.01(C)(4), App. 406], "extraordinary medical expenses" (Apps. 60,#4;70-71,#6;186;244-245,#3;422-423), includes 'appropriate private education' (App. 407) without durational limitations (Apps. 390-391; 393; 396-397; 399-401), i.e., not precluding college.

Not Adequate and Not Independent: Ohio's preference for agreements, (App. 389, 392, 403, 414, 437) and refusal to order Father to save overtime or pay any schooling expenses, combined with Ohio's refusal to order provisions for college expenses (App. 11; 170-175 amended at 156-157). *Only inadequate state bases were relied upon;* i.e., lack of *agreement* (Apps. 11; 174-175, 188); *net disposable* income after expenses (App. 10); duration of court's authority and jurisdiction to order (Apps. 11; 175) contingent on agreement of the parties; *superseded, preempted, inappropriate state* authority (App. 11, FN18; 170-174) inter alia, since children are *now minors, not adults.* Nor were any *adequate* bases for *precluding access to powers* (App. 388, 399) *and jurisdiction* (App. 276-278, 266+) *of courts* to seek college support post age 18 (Apps. 11; 175) set forth.

"General" age of majority is 18 (App. 393), but Mother argued majority for support purposes is [H.B. 352 eff. 1/1/98-3/21/01] as "the *order provides*" (App. 387,

391, 400; *Cf.* App. 414-416, eff. 3/22/01), unless agreement exists (App. 389, 392; *Cf.* App. 414-416). **Emancipation is a *judicial* not legislative determination.** *Legislative findings* related to parental responsibilities (R.C. §§3109.04, 3109.03, 3109.401) (Apps. 394-398; 403-404) are not *judicial* determinations either. Thus, any arbitrary cut-off age or unconstitutional legislative classes or findings could not suffice as adequate grounds either. Nor were bases evenly applied as cited in the record calling for certification of conflicts. *Call for the record.* All determinations were *entwined with federal claims,* amply before each court.

Seventeen at college: **Judicial findings found that Garrison commences college at *age 17*, while Samuel commences at *age 18*** (App. 157, #5); jurisdiction was first retained over college expenses "which *may be incurred* during their minority" (App. 143, #3), as also couched, App. 72, #11, "during their minority," (*way* different given 26 U.S.C. §529, App. 348-362), or as altered via App. 11's law of the case. Ohio courts make college orders on top of initial Agreements. (See record) Financing the continuation of college studies is an issue affecting both brothers.

SUMMARY: BALANCE OF STATE AND FEDERAL POWERS OVER PRIVACY EXPECTATIONS

Carpe Diem. The issue is the *balance of state and federal powers* related to a state's unwarranted civil intrusion on individuals' privacy expectations and equal protection rights including a state's structuring of its own judiciary

and statutes so that its courts lack powers in authority and jurisdiction to sufficiently protect a broad basket of individuals' intangible effects – familial, education, governmental, contractual, disclosural, autonomy, et al. Privacy expectations to equal justice violated include inter alia: mothers and children's free exercise of educational choice, disclosural rights to nonrelease of personal info locally and across the Internet, contractual allocation of federal tax benefits, access to jurisdiction and authority of state courts over higher educational support, pre-majority/post-majority educational support orders, nonvague educational support statutes, equal access to federal courts when ambiguous opinion on review, et al.

This Court must determine if multifaceted, "privacy" rights are federally constitutional in nature leaving state sovereignty intact, or if such rights stem from federal statutory mandates eliminating states' sovereignty. Either way, individuals' fundamental rights must be federally fortified, as against intrusions of state officials – judicial, legislative, entwined court clerks, IRC §529 plan administrators – in quest of federal uniformity.

First, and the best choice is to solidify Fourth Amendment's leaning towards prohibiting unreasonable searches or seizures in civil matters. Safeguard personal privileges grounded in objectively measurable First Amendment freedoms, Fourteenth Amendment, §1 and Twenty-Sixth Amendment protections, prohibiting age, gender, socio-economic legislative discrimination in the exercise of political and other classification freedoms, in nexus with educational benefits [*San Antonio v. Rodriguez* dissent]. Congressional intent and enactments may be recharacterized as affirmations of the reasonableness of society's expectations of privacy.

Or *Second*, extol the non-geographic, portable nature of citizens' privacy claims without invoking Commerce Clause; instead employ textual provisions instilling citizens' and residents' privileges to *equal state citizenship*, entitlement to full faith and credit of other states' *laws* regardless of physical state of residency, i.e., Fourteenth Amendment, §1 (Citizenship, privileges) Article IV (§1, §2), finally establishing a home for the unanchored "right to travel," without which persons seeking to protect such privacy rights must move (and children cannot, nor families caught in family-courts) to forum shop as vague laws change at the whims of lobbied legislators to thwart judicial advances. *Legislators improperly dictate judicial emancipation.*

Or *Third*, hold *state sovereignty is eliminated via preemption:* reciting Congressional authority, intent (see Pub.L.'s in Apps.), implied, independent and enforcement powers (Article I, §8, cl. 1, 3, 18; Fourteenth Amendment, §5, Twenty-Sixth Amendment, §2), along with enactments, i.e., The Privacy Act of 1974, the 1994 Full Faith And Credit for Child Support Act, Title IV of Social Security Act, 26 U.S.C. §529 (529 Prepaid College Programs), et al., and The Supremacy Clause (Article VI, cl. 2) to hold federal preemption *dislodges* states' discretion to preclude jurisdiction and authority of state courts even over traditional matters of state authority; invoke the Commerce Clause, and the portable nature of privacy expectations crossing physical boundaries (i.e., portable educational benefits, non-geographically fixed Internet's world wide web, out of state schooling and college opportunities), post *Reno v. Condon*. Add controlling nature of federal common law, adherence to the doctrine of stare decisis, to reiterate dual sovereignty. All three

routes were presented or decided, *Adams v. Robertson, Board of Directors of Rotary International v. Rotary Club of Duarte*, 481 U.S. 537, 550, 107 S.Ct. 1940, 1948, 95 L.Ed.2d 474 (1987), enabling federal jurisdiction.

REASONS: ISSUES OF FIRST IMPRESSION

A. PRIVATE CHOICE IN CINCINNATI, ABSENT IN CLEVELAND SCHOOL VOUCHER CASE, EXTENDS DETERMINATION TO PROTECT ALL SCHOOL CHILDREN

Despite that case's budget, answers here reach further than in Cleveland's school voucher dilemma, *Simmons-Harris v. Zelman*, 234 F.3d 945, 149 Ed. Law Rep. 691 (6th Cir. (Ohio) Dec. 11, 2000), (3) Petitions for Certiorari filed about May 23, 2001, No. 00-1751+, incorporated by reference. Here " 'the class of beneficiaries include [ ] all schoolchildren, those in public as well as those in private schools.' " *Id.* at *954 quoting *Committee for Public Education v. Nyquist*, 413 U.S. 756, 782, n. 38 (1973), citing *Tilton v. Richardson*, 403 U.S. 672 including those in pursuit of, now or someday, higher education, including graduate-level college. *Pick this case*, since the *only* answer to, *"is there truly 'private choice' "?*, *Simmons* at *961, is Yes! Whether they agree or not, this couple's "parental choice as a determining factor," *id.*, at *960, was not constricted to "available choices resulting from the [voucher] program design," *id.*, at *961.

Here, educational orders, and access to authority and jurisdiction of state courts must be held as "neutral aid," *ibid.*, in which "attenuated financial benefit, [is] ultimately controlled by the private choices of individual

parents," *id.*, at *955, quoting *Mueller v. Allen*, 463 U.S. 388, 400 (1983). "Private choice also helps guarantee neutrality," *Mitchell v. Helms*, 120 S.Ct. 2530, 2541 (2000) (plurality), "an important reason for upholding government-aid," *id.*, at *811, "[G]overnment limitation of the available [school] choices," *Simmons* at *960, intrudes on free exercise, i.e., a duration of K-12 only (no preschool, prepaid college orders or access to courts for college); only public, wholly "free" schools available (since no orders allocating costs), failing to "yield to the right of parents to provide an equivalent education in [either] a privately operated system," *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972) or in a publicly supported, preschool – higher education system. Neither preschool nor higher education is free, nor is *attendance* at schools – home, private, parochial, public, charter, magnet – since all rely on hefty parental support, a myriad of activity fees, tuitions (hidden or otherwise), armtwisting 'voluntary' assessments, and obligatory contributions.

In Cincinnati, private monies funded the library, athletics, and a stunning, $10+ million, new science center at public Walnut Hills High. Public magnet gem, The School for the Creative and Performing Arts and private donors are *required* to raise a matching $26+ million before Cinti. Public will shell out an equal amount for Cinti Symphony Orchestra's maestro, Eric Kunzel's dream for a new, inner city, K-12 Arts School attached to Music Hall. Across the nation, parents don't timely pay nominal, per pupil annual supply fees (App. 429) assessed for bare minimums needed in public academic classrooms – accruing until years later when withholding of a diploma is threatened. Presumption of public, i.e., free, schooling is

unconstitutional, *Nyquist*, 413 U.S. at 788; *LeClair v. LeClair* (1993), 137 N.H. 213, 225 (refused to make presumption in favor of public higher ed), as are related irrebutable presumptions, i.e., *Thompson v. Oklahoma*, 487 U.S. 815 (1988) (SCALIA, dissent) (individualized consideration of maturity); *Vlandis v. Kline*, 412 U.S. 441 (1973) (out of state tuition). *Free exercise of private choice costs. Even public schooling costs.*

B. TWENTY-SIXTH AMENDMENT GUARANTEES APPROPRIATE EDUCATION IN NEXUS WITH POLITICAL FREEDOMS

Although, "long before the Nation's adoption of the Twenty-Sixth Amendment in 1971," *Stanton*, 421 U.S. at 16, the "natural *duty* of the parent to *give* his children *education suitable*," *Meyer v. Nebraska*, 262 U.S. 390, 400 (1923), to "prepare [them] for additional obligations," *Pierce v. Society of Sisters*, 268 U.S. 510, 535 was fundamental. One matter "at issue is [higher educational] support * * * during * * * years between 18 and 21," *Stanton*, 421 U.S. at 1, and beyond. Yet, "[s]tudents – who, by reason of the Twenty-Sixth Amendment become eligible to vote when 18 years of age – are adults who are members of the college or university community." *Healy v. James*, 408 U.S. 169, 197 (1972). A corrective reaction to literacy tests, *Oregon v. Mitchell*, 91 S.Ct. 260 (1970), states' *dual educational tracks* ostensibly eradicated by the 26th, were oiled instead. Millions were stripped of educational support necessary to exercise political privileges, after the no-fault divorce plague ripped families asunder; when too many vied for too few governmental scholarships, repayment of student loans was the cursed bounty,

or the financial drain of appropriate education was skipped. " 'There is no recourse for these children, who will be victimized twice, first by the disruption, both financial and psychological, of their parents' divorce and again by the system which is theoretically designed to protect them.' " 34 Duq. L.Rev. 471, 484, quoting *Curtis v. Klein*, 542 Pa. 249, 267 (MONTEMURO w/CAPPY, dissent) (disadvantage requiring college orders exists).

> "There is, in short, no limit on the amount of free speech or political participation that the Constitution guarantees. Moreover, it should be obvious that the political process, like most other aspects of social intercourse, is to some degree competitive. It is thus of little benefit to an individual * * * to have 'enough' education if those around him have more than 'enough.' "

San Antonio v. Rodriguez, 411 U.S. 1, 115, 1339 (MARSHALL, dissent)

Education entwines with free exercise of political rights: "*that right [to participate in the electoral process]* – [ ] is itself 'preservative of other *basic civil and political rights*'," *Frontiero v. Richardson*, 411 U.S. 677, 685; "education is the dominant factor affecting political consciousness and participation." *San Antonio, dissent* at *113, **1338. Nor does college precedence exist since "the provision for the maintenance and education of Sadie here relied upon as res judicata," [290 U.S. at 206] disabled determination. See *Yarborough v. Yarborough*, 54 S.Ct. 181, 188-189, 290 U.S. 202, 220-222 (1933) (STONE, J., dissent) **("Higher education is properly an object of a suit for an increased allowance [of support]").**

C. CHILDREN'S RIGHTS TO CONTINUE FAMILIAL BONDS, "PARENTAL DUTY TO EDUCATE" AND TO EQUAL STATE CITIZENSHIP

An answer to laments opined in *Troxel v. Granville*, 120 S.Ct. 2054 (2000), i.e., 120 S.Ct. at 2072 (STEVENS, dissent), 120 S.Ct. at 2075 (SCALIA, dissent), 120 S.Ct. at 2067 (THOMAS, concurring), here *children's rights of association or free exercise, and privileges to continuing familial bonds*, "the parental duty to educate" is squarely brought. "[A] parent's decision concerning the manner in which his child is to be educated may fairly be characterized as (an) exercise[ ] of *familial rights and responsibilities.*" *Runyon v. McCrary*, 427 U.S. 160, 178 (1976). "[P]arents and others, teachers for example, who have this primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility." *Ginsberg v. State of New York*, 390 U.S. 629, 639 (1968). "It is the future of the student and not the future of the parents that is imperiled * * * ." *Wisconsin v. Yoder*, 406 U.S. at 245 (DOUGLAS, dissent). Students are afforded constitutional protections, *New Jersey v. T.L.O.*, 469 U.S. 325, 348 as are children. See cases, *Troxel*, at *2072, FN8 (STEVENS, dissent). "[O]nce a State posits a judicially enforceable right on behalf of children to needed support from their natural fathers there is no constitutionally sufficient justification for denying such an essential right to a child * * * ." *Gomez v. Perez*, 409 U.S. at 538.

To paraphrase *Weber v. Aetna Cas. & Sur. Co.*, 406 U.S. 164, 175 (1972), "no child is responsible for his [parents' splitting up] and penalizing the [broken-home] child is an

ineffectual – as well as an unjust – way of deterring the parent." "The children * * * can affect neither their parents' conduct nor their own status." *Plyler v. Doe*, 457 U.S. 202, 220 (1982) quoting *Trimble v. Gordon*, 430 U.S. 762, 770 (1977). "[A] child's right to reside in the State, which is an element of the constitutional right to travel," *Martinez v. Bynum*, 461 U.S. 321, 346, FN14 (1983) (MARSHALL, dissent), is violated, applying *Lunding v. New York*, 522 U.S. 287 (1998) quoting *Paul v. Virginia*, 8 Wall. 168, 180 (1868) (equal state citizenship). Art. IV, §1, §2. 28 U.S.C. §1738B. Whether it "absolutely preclude[s] a child from attaining an education is, of course, irrelevant. *See, e.g., Mississippi University for Women v. Hogan*, 458 U.S. 718, * * * (1982)." *Martinez*, at *346, **1852. "[A] legitimate child may seek support from his or her parents at any time." *Clark v. Jeter*, 486-U.S. 456, 457 (1988); nor is a "child" actually a "minor child," *Sullivan v. Stroop*, 496 U.S. 478, 482 (1990). 28 U.S.C. §1738B.

D. FOURTH AMENDMENT SAFEGUARDS SUPERSEDE SUBSTANTIVE DUE PROCESS LANDMARKS

"[O]ur substantive due process cases were *wrongly decided* and [ ] the original understanding of the Due Process Clause precludes judicial enforcement of unenumerated rights under that constitutional provision." *Troxel*, 120 S.Ct. at *2067 (THOMAS, concurring), i.e., *Roe v. Wade*, 410 U.S. 113, 164 (1973) ("without recognition of the other interests involved, is violative of the Due Process Clause of the Fourteenth Amendment."); *Meyer*, 262 U.S. at 400-402. Further "whether the [Privileges or Immunities] Clause should displace, rather than

augment, portions of our equal protection and substantive due process jurisprudence."), *Saenz v. Roe*, 526 U.S. 489, 528 (1999) (THOMAS, dissent w/REHNQUIST, C.J.) must be weighed. Vitality continues absent express overruling, *Shalala v. Illinois Council*, 120 S.Ct. 1084, **1096 (2000), so overrule *Roe v. Wade, Meyer, et al.*, to erect your legacy of a *textual fortress*.

Infringement on First Amendment freedoms and beliefs, *Simmons-Harris v. Zelman, Troxel v. Granville*, 120 S.Ct. 2054, 2076 (KENNEDY, dissent) ("*Pierce* and *Meyer*, * * * [if determined today would be] grounded upon *First Amendment principles* protecting *freedom of speech, belief, and religion.*"); *M.L.B. v. S.L.J.*, 519 U.S. 102, 116 (1996) ("Choices about marriage, family life, and the upbringing of children are among the *associational rights* this court has ranked as basic importance in our society"; *Sweatt v. Painter*, 339 U.S. 629, 634 ("It is difficult to believe that one who had a free choice between these law schools would consider the question close.") "trigger special Fourth Amendment safeguards," 107 Harv. L.Rev. 757, 806, "guaranteed by the Fourteenth Amendment against invasion by the States," *Stanford v. Texas*, 379 U.S. 476, 481 (1965), citing *Mapp v. Ohio*, 367 U.S. 643, leaving as "little as possible to the discretion or whim of the officer in the field." *Zurcher v. Stanford Daily*, 98 S.Ct. 1970, 1981 (1978); *Delaware v. Prouse*, 440 U.S. 648, 653-655 (1979) (objective reasonableness standards).

"[T]he Fourth Amendment protects *people* – and not simply 'areas'," *Katz v. United States*, 389 U.S. 347, 353 (1967) (HARLAN, concurring). "[T]he first Clause of the Fourth Amendment explicitly addresses all searches and seizures, not just criminal ones." 107 Harv. L. Rev. 757,

770. "The Fourth Amendment's *protection of the home* has never been tied to measurement of the quality or quantity of information obtained." *Kyllo v. United States*, 121 S.Ct. 2038, 2045 (2001). "[C]hildren are 'persons' within the meaning of the Bill of Rights," *Yoder*, 406 U.S. at *243 (DOUGLAS, dissent), and cases cited there.

"[A] person's 'effects' may be intangible," 107 Harv. L. Rev. at *811, as held by *Katz* at *353, **512; *Griswold v. Connecticut*, 381 U.S. 479, 495 (1965) (GOLDBERG, concurring) quoting *Poe v. Ullman*, 367 U.S. 497, 551-552 (1961) (HARLAN, dissent) (" 'safeguarding of the home does not follow merely from the sanctity of property rights.' "). "Jurisdiction over an intangible," *Estin v. Estin*, 334 U.S. 541, 548 (1948) "arise[s] from control or power over the persons whose relationships are the source of the rights and obligations." *Ibid.* The Fourteenth Amendment, §1 benchmark, "providing substantially equal tangible and intangible educational benefits to men and women" *U.S. v. Virginia*, 518 U.S. 515, 548, enables objective measurement. So do future associational rights, *Mayer v. Chicago*, 404 U.S. 189, 197 (1971); *Sweatt* at *634-635, **850. Ohio's search or seizure of privacy expectations: free exercise, educational effects, equal justice, political participation, contractual, et al., compels federal protection whether judge-made, federal common law, constitutional interpretation, congressional regulation or enactment.

ARGUMENT

*"Draw [ ] upon the principles established by the cases just canvassed," Boddie at *380, incorporating Petition and Appendices fully by reference herein:*

1. Preclusion of Educational Benefits Impels Socio-Economic and Blatant Gender Discrimination

"If the impact * * * could not be plausibly explained on a neutral ground, impact itself would signal that the real classification * * * was in fact, not neutral." *Personnel Adm'r of Massachusetts v. Feeney,* 442 U.S. 256, 274-275 (1979). Statutes' covert preference for fathers by design or pretext, effects purposeful discrimination against mothers; O.R.C. Title 31's legislative classifications, differential treatment, vagueness and abstention from educational support disparately delivers dads *loopholes, explicitly elevating refusal to agree* (R.C. §§3105.65(B), 3105.10(B)) as means to evade the duty to educate. Kids turn to moms who sacrifice. Standards argued: *exceedingly persuasive justification, Miller v. Albright,* 523 U.S. 420, 482-483, cases cited there; *strict scrutiny* given fundamental rights, *Frontiero, Virginia; means and ends* given personal rights, *Weber v. Aetna, Zablocki.* O.R.C. Title 31 statutes challenged as unconstitutional, *inter alia,* §§3103.03; 3105.10; 3105.21; 3105.65; 3109.01; 3109.03; 3109.04; 3109.05; 3109.401; 3113.21; 3113.215; 3119.05; 3119.86; 3119.88, (App. 396-417), UIFSA (R.C., chapter 3115.xx, S.B.352) violating First, Fourth, Ninth and Fourteenth Amendments, 28 U.S.C. §1738B.

Neither "eliminating one class of contests", *Reed v. Reed,* 404 U.S. 71, 76 (1971), administrative convenience, *Frontiero,* 411 U.S. at 688, nor "preference for an allocation

of family responsibilities", *Orr v. Orr*, 440 U.S. 268, 279-280 (1979), can sustain arbitrary classifications, *Harper v. Va. Bd. Of Elect.*, 383 U.S. 663, 666 (1966).

2. Seizure of Appropriate Education from Gifted

Parental support is "as essential to education as any other element" *Everson v. Board of Ed. of Ewing Tp.*, 330 U.S. 1, *48 (1947) like materials and equipment, *Mitchell v. Helms*, 120 S.Ct. 2530 (2000) and transportation, *Everson*, 67 S.Ct. at 527. No direct payment is at issue. *Mitchell* at *820, **2547. Review centuries of common law duty to support, *Haxton v. Haxton*, 299 Or. 616 (Or. 1985). *Meyer, Stanton I* at *15. *Memorial Hospital v. Maricopa County*, 415 U.S. 250, at *259, 94 S.Ct. 1076, 39 L.Ed.2d 306 (1974). Gifted too, require special educational benefits "appropriate to their needs," *Dellmuth v. Muth*, 109 S.Ct. 2397, 2399 (1989), like handicapped. See *Centennial Sch. Dist. v. Commonwealth Dept. of Educ.*, 539 A.2d 785 (Pa. 1988) (seminal, district had obligation to provide gifted individualized program); *cf. Broadley v. Meridien Bd. of Educ.*, 639 A.2d 502 (Ct. 1994). "[P]arental right to reimbursement," *Sch. Comm. * * * v. Dept. of Educ. of Mass.*, 105 S.Ct. 1996, 2004 (1985) from the *state* did not extend in *J.D. ex rel. J.D. v. Pawlet Sch. Dist.*, 224 F.3d 60, 65 (2nd Cir. 2000) (gifted not eligible under IDEA); Individuals with Disabilities Educ. Act, 20 U.S.C. §§1400-1485+. 27 J.L. & Educ. 131 Journal of Law and Education January, 1998, "Gifted Students And The Right To An Ability Appropriate Education", Anne Scholtz Heim.

On Point Parental Gifted Support: Ordered to pay schooling for gifted sons, *Barnett v. Barnett*, 1999 WL 64269 (Tenn.Ct.App. 1999) *aff'd Barnett v. Barnett*, 27

S.W.3d 904 (Tn. 2000); *Pellish v. Gerhart*, 701 A.2d 594, 597 (Pa. Sup. Ct. 1997). *Cf. Hardisty v. Hardisty*, 183 Conn. 253, 262-265 (Ct. 1981). Ordered to pay college for gifted: *Ex parte Bayliss*, 550 So.2d 986, 991-995 (1989 Al.) (equal prot. denied), with appeal aft. rem., *Bayliss v. Bayliss*, 575 So.2d 1117, *cert. denied, Ex parte Bayliss II* 575 So.2d 1122; *Esteb v. Esteb*, 244 P. 264, 265-267 (*en banc*, 1926), *supp.* 246 P. 27 (father died; estate relieved). *Cf. Middlebury College v. Chandler*, 16 Vt. 683, at *2, 42 Am. Dec. 537 (1844) (not necessity since no particular genius). Other college rules: benefits *may inure post majority, Nash v. Mulle*, 846 S.W.2d 803, 806-810; out of state choice, *Saliba v. Saliba*, 753 So.2d 1095, 1102-1103 (Ms. 2000); not restricted to public higher ed [adult child], *LeClair v. LeClair*, 624 A.2d 1350, 1357 (1993); *Cf. Curtis v. Kline*, 666 A.2d 265, 271-274 (Pa. 1995) (*dissent*) (legis. classif. of *adult children* viol. equal prot.); duty includes law school, *Newburgh v. Arrigo*, 443 A.2d 1031, 1037-1038 (N.J. 1982); *In re Marriage of Kohring*, 999 S.W.2d 228, 231-234 (Mo. 1999) (order made, but economic consequences *do not* affect associational rights). *Ohio arbitrarily cast away Mitchell v. Mitchell*, 166 N.E.2d 396, *syllabus two* (1960) (1/19/99, T.d. 247-252).

3. Oust Obsolete Constitutional Thinking

Apply *Agostini v. Felton*, 521 U.S. 203, 235 (1997), post 26th Amendt., post *Saenz, Kyllo, Reno*, to overrule 'obsolete constitutional thinking.' Appropriate and Higher Education are explicit fundamental rights, subject to strict scrutiny. Gender is a suspect class. Expectations are *not* in hand, intrusions are *not* contingent upon intent. Enable Privileges or Immunities clause to make Bill of Rights applicable to states, *Oyama v. California*, 332 U.S. 633

(1948). *Disable discriminatory myths.* Apply *Graham v. Connor,* 490 U.S. 386, 395 (1989), "to employ textual constitutional provisions rather than any 'generalized notion of substantive due process.' A standard of reasonableness, *Delaware,* of *civil intrusions* must be balanced against state's legitimate interests, *Vernonia School Dist. 47J v. Acton,* 515 U.S. 646, 652-653, since '[c]onstitutional protection * * * does not disappear merely because the government has the right to make *reasonable* intrusions * * * .' *O'Connor v. Ortega,* 480 U.S. 709, 731 (1987) (SCALIA, concurring). "[T]he Fourteenth Amendment extends this constitutional guarantee to searches and seizures by state officers," *Vernonia* at *652, **2390, *T.L.O.*

Freedom of Personal Choice: Such federal constitutional "guarantee of personal privacy"; *Roe v. Wade* at *152, **726 encompasses "family relationships, * * * child rearing and education, (c/o)." *Roe* at *153, **726-727; see *Runyon v. McCrary,* 427 U.S. 160, 178, N. 15 (1976) ("Meyer-Pierce-Yoder "parental" right and the privacy right, * * * may be no more than verbal variations of a *single* constitutional right."). Embodying "the interest in independence in making certain kinds of important decisions (c/o)." *Whalen v. Roe,* 429 U.S. 589, *599-600, such autonomy protects neutral "freedom of personal choice," *Roe,* 410 U.S. at 169, against Fourth Amendment intrusions.

Equal Justice: "[T]he right to marry is part of the fundamental 'right of privacy'," *Zablocki* at *384, with "support for the fundamental importance of marriage is found in our decisions dealing with rights of access to courts in civil cases." *Id.* at *385. *Boddie, Mayer.* "The 'well-established' right of access to the courts * * * is one of these aspects of liberty that States must *affirmatively*

protect." *Lewis v. Casey*, 518 U.S. 343, *404-405+ (1996) (STEVENS, dissent) (freedom to petition). "[T]ermination of a marriage * * * requires access to the State's judicial machinery." *M.L.B. v. S.L.J.*, 519 U.S. at 102, *115 (1996). Stop Ohio from "bolt[ing] the door to equal justice." *M.L.B.*, 519 U.S. at 102-103, *quoting Griffin*, a repeated intrusion.

4. Federal Duty to Uniformly Protect Minors

Federal common law thrives. *Semtek Intern. Inc. v. Lockheed Martin Corp.*, 121 S.Ct. 1021, 1028 (2001). The Supremacy Clause "makes federal law paramount over the contrary positions of state officials; the power of federal courts to enforce federal law thus presupposes some authority to order state officials to comply." *DeRolph v. State*, 83 Ohio St. 3d 1208, 1210 (1998), quoting *New York v. United States*, 505 U.S. 144, 179 (1992). *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 340-41 (1816). Dual sovereignty embeds a "system of federalism in which the state courts share responsibility for the application and enforcement of federal law." *Howlett v. Rose*, 496 U.S. 356, 372-373 (1990), but the federal judiciary must "give concrete constitutional guidelines for * * * [state] courts to follow." *Dickerson v. U.S.*, 530 U.S. 428, 438-439 (2000) "when necessary to assure compliance with the dictates of the Federal Constitution." *Harris v. Rivera*, 454 U.S. 339, 345 (1981). Uniformly protect our nations' children from the states. *Ashcroft v. ACLU, COPA [Child Online Prot. Act] petition; (CAPRA) v. Sullivan*, 787 F. Supp. 738, 739 (U.S. Dist. Ct., 1992) (preemption in support); *DeSylva v. Ballentine*, 351 U.S. 570, 583 (1956) (DOUGLAS, concurring) (uniformity in protecting dependents). *Cf. U.S. v. Faasee*, 227 F.3d 660 (6th Cir. 2000),

rehearing granted (CSRA [Child Sup. Recovery Act] exceeded commerce cl. authority). Federal statutes challenged as unconstitutional, facially, as applied and in effect include: 5 U.S.C. §551; 5 U.S.C. §552a; 20 U.S.C. §1400-1485+; 28 U.S.C. §1738B; 26 U.S.C. §529; 42 U.S.C. §§651, *et seq.*, 42 U.S.C. §405 et al. Age, wealth, socio-economic, mental and personal characteristics' discrimination is rampant for multiple legislative classifications.

5. Internet and Local Release of Personal Info

"Constitutional recognition of individual security against unwarranted state intrusion," *Arizona v. Evans*, 115 S.Ct. 1185, 1198 (1995) (GINSBURG, dissent) precludes "governmental intrusion into the privacy of the home." *Runyon*, 96 S.Ct. at 2598. *Whalen*, 97 S.Ct. at 879 opined "the threat to privacy implicit in the accumulation of vast amounts of personal information in computerized data banks or other massive governmental files." *Reno v. Condon*, 120 S.Ct. 666 (2000) nixed states release of personal information[5] as a violation of Commerce Clause. *Kyllo* sidestepped question of Fourth Amendment protections against technology in widespread usage; for Internet, *see American Library Ass'n v. Pataki*, 969 F. Supp. 160, 184 (S.D.N.Y. 1997) ("the unique nature of cyberspace necessitates uniform national treatment"); *ACLU v. Reno*, 217 F.3d 162, 168-169 (3rd Cir. Pa. 2000), *cert. granted, Ashcroft v. ACLU*, 121 S.Ct. 1997 (May, 2001).

---

[5] *See* conflicts among districts in paper, "Privacy and Access to Electronic Case Files in the Federal Courts," *www.uscourts.gov/privacy.pdf* (federal disclosural rights debate) incorporated by reference.

Federal "intrusion into state affairs is * * * justified when the state court has * * * failed to provide the constitutional minimum of protection." *Harris v. Reed,* 489 U.S. 267 (STEVENS, concurring) since "every unjustifiable intrusion by the government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment." *Olmstead v. U.S.,* 277 U.S. 438, 478 (1928) (BRANDEIS, dissent). *Griswold,* 381 U.S. at 484-485. Avail relief to all.

Duty to Avert Disclosure: Ohio failed its duty to implement means to avoid unwarranted disclosures of personal data, *Whalen,* 429 U.S. at 605, and to comply with federal regulations. *Reno,* 120 S.Ct. at 672 quoting *South Carolina v. Baker,* 485 U.S. 505, 514-515 (1988). The Privacy Act of 1974, 5 U.S.C. §552, §552a note, uncodified Section 7(a), (b), Pub. L. 93-579. Personal data is to be redacted by courts prior to records availed as public documentation. *Heights Comm. Congress v. Vet. Admin.,* 732 F.2d 526 (6th Cir. 1984); *Kallstrom v. City of Columbus,* 136 F.3d 1055, 1062 (6th Cir. 1998). Burden to disable public documentation of private data employed within judicial proceedings rests on state. *Cox Broadcasting v. Cohn,* 420 U.S. 469, 496 (1975). Standard of review determines government's interest in disclosure. *Greidinger v. Davis,* 988 F.2d 1344, 1353-1354 (4th Cir. 1993).

Entwinement: The question of entwinement of court clerks and 26 U.S.C. §529 prepaid college entities, as state officers making policy is ripe: *Brentwood Acad. v. Tennessee,* 121 S.Ct. 924, 930-931 (2001); *College Savings v. Florida Prepaid Postsecondary Educ. Expense Bd.,* 119 S.Ct. 2219, 2233 (1999) (STEVENS, dissent); *McMillian v. Monroe Cty. Alabama,* 117 S.Ct. 1734, 1743 (1997) (GINSBURG, dissent). *Maricopa* at *256, **1081. A clerk's letter (App. 160,

163-164) is a court order. *Burns v. Ohio*, 360 U.S. 252, 254-257 (1959). Ohio Tuition Trust Authority sets forth state's college savings over time policy. *Injunctive relief* for *all* persons effected by unconstitutional privacy practices is sought. Inter alia, the constitutionality of Ohio's records release and supervision statutes are challenged, as applied, in effect, facially: §§149.43; 2303.03; 2303.08; 2303.26; 2303.31; Title 31 provisions, in violation of First, Fourth, Fourteenth Amendments. Also statutes and practices enabling worldwide release of personal information conflicts with *Whalen, Reno*, 5 U.S.C. §552a.

Armory of Congressional powers: Family law once governed by states, *Sosna v. Iowa*, 419 U.S. 393 (1975) is no longer exclusive, *Garcia v. San Antonio*, 469 U.S. 528 (1985). The "presumption against pre-emption * * * can be overcome * * * " *Egelhoff v. Egelhoof*, 121 S.Ct. 1322, 1330 (2001).

"Congress, not the courts, must remain primarily responsible for striking the appropriate state/federal balance." *U.S. v. Morrison*, 120 S.Ct. 1740 (2000) Part I-A (BREYER, dissent). "Congress' power 'to enforce' * * * includes the authority both to remedy and to deter violation of rights guaranteed thereunder by prohibiting a somewhat broader swath of conduct, including that which is not itself forbidden by the Amendment's text (c/o)" *Kimel v. Florida*, 528 U.S. 62, 81 (2000). No "plain showing that Congress has exceeded its constitutional bounds," has been met, *Morrison*, 120 S.Ct. at 1748. Congress took that "hard look," *Morrison*, 120 S.Ct. at Part I-B (BREYER, dissent), even making plain statements of congressional intent, *Gregory v. Ashcroft*, 501 U.S. 452, 460-461 (1991).

Although "[e]very law *enacted* by Congress must be based on *one or more* of its powers *enumerated* in the

Constitution," *Morrison*, 120 S.Ct. at 1748, its armory is full: spending powers, *South Dakota v. Dole*, 483 U.S. 203, 206 (1987), *United States v. Butler*, 297 U.S. 1 (1936), "cooperative federalism," *Hodel v. Virginia*, 452 U.S. 264, 288-289 (1981), *FERC v. Mississippi*, 456 U.S. 742, 764-765 (1982), implied powers, *McCulloch*; Commerce Clause's aggregation principle, *Wickard v. Filburn*, 317 U.S. 111 (1942), or via release into interstate stream, *Reno*, 528 U.S. at 148. Like *Reno*, Petitioner bypasses "substantial effects" and argues second category, *U.S. v. Lopez*, 514 U.S. 549, 588 (1995). Fourteenth Amendment, §5 powers are wobbly, post *Bd. Of Trustees of Univ. of Alabama v. Garrett*, (2001) (BREYER, dissent) (saps §5 of independent force).

FFCCSOA and UIFSA Evolve From '92 Blueprint: The 1997 Supplement to Child Support Guidelines, §4.05, pp. 4-21-4-30, references the U.S. Commission On Interstate Child Support as recommending via *Supporting Our Children: A Blueprint for Reform* (1992) **that states change existing laws to allow decision makers the discretion to award child support up to age 22** if the child is enrolled in good standing at a postsecondary or vocational school, supra, at §4.05(d), p. 4-30, FN97. "Congress *acted* on the *recommendations* of the Commission with a variety of legislative efforts [] [including] ***Full Faith and Credit for Child Support Orders Act***, Pub.L. No. 103-383, §3(a), 108 Stat. 4063, 4064 (1994) (codified at 28 U.S.C. §1738B)," *U.S. v. Kramer*, 225 F.3d 847, 855 (7th Cir. Ind. 2000).[6]

---

[6] *Kramer* traces the *unenacted* Uniform Interstate Family Support Act ("UIFSA"), as emanating from that *Blueprint*. Elsewhere UIFSA is described as "a model state law," *Nunnery v.*

CONCLUSION

Listen to experts, Lenore Weitzman, and Judith Wallerstein[7] who have correlated the lifelong socio-economic scars debilitating mothers and children with courts' failure to order educational support. This petition for a writ of certiorari should be granted.

Respectfully submitted,

DEE ELLEN GARRISON BARDES
Petitioner, pro se
SAMUEL POGUE TODD IV
Minor Child, age eleven
GARRISON BARDES TODD
Minor Child, age nine
1035 Paxton Avenue
Cincinnati, OH 45208-2828
513/871-4959

August 31, 2001

Florida, 102 F. Supp. 2d 772, 776 HN1, (E.D.Mich. Jun. 30, 2000), "to create uniformity * * * ," a trend noted in *"A Matter of Interpretation, Federal Courts and the Law,"* by Justice A. Scalia, 1997, Princeton Univ. Press, p. 12, FN10. 42 U.S.C. §666(f) sets UIFSA date.

[7] The *myth* "that fathers who see their children regularly, who are financially secure, and who value education, will provide the financial assistance necessary for their children's higher education," *"The Long Term Impact of Divorce on Children, A First Report from a 25 year Study,"* T.d. 156, 7/29/97 Vol. V, #20, p. 6-9, has *long been debunked* via Judith S. Wallerstein, Ph.D, who coauthored such study with Julia Lewis, Ph.D, published in 2000, as *"The Unexpected Legacy of Divorce,"* Hyperion, New York City, with S. Blakeslee, ISBN 0-7868-6394-3, *read p. 250-254.* Petitioner thanks Dr. Lewis for advancing that study in full for the courts' review, as first raised in support of 7/29/97 P's Emerg. Mot, re Children's Equal Rights to Appropriate Education Due to Policy, T.d. 159 with five binders of policy, statistics, and on point cases, T.d. 154-158.

TABLE OF CONTENTS

Page

VOLUME I

APPENDIX A, First District's Orders

Merits:

Opinion, Court of Appeals, First Appellate District of Ohio, Filed October 13, 2000 .....App. 1

Judgment, Court of Appeals, First Appellate District of Ohio, Filed October 13, 2000 .....App. 12

Entry Overruling Motion to Certify Conflict, Overruling Application for Reconsideration, Overruling Motion to Stay, and Striking Filing, Court of Appeals, First Appellate District of Ohio, Filed November 3, 2000 .....App. 13

Entry Overruling Motion for Stay and Application for Reconsideration, Court of Appeals, First Appellate District of Ohio, Entered December 1, 2000 .....App. 15

Entry Overruling Motion to Compel Clerks to Redact Private Data Prior to Scanning or Availing Public Access, or in the Alternative Not to Scan Documents Containing Private Data, or in the Alternative to Seal Appendix to Brief, Entered June 2, 2000 .....App. 15a

Certificate:

Entry Striking Filing of May 29, 2001, Entered June 15, 2001..... App. 15b

Entry Overruling Motion to Certify, Court of Appeals, First Appellate District of Ohio, Entered March 24, 2000.....App. 327

TABLE OF CONTENTS – Continued

Page

Entry Striking Filing of May 29, 2001, Court of Appeals, First Appellate District of Ohio, Entered June 15, 2001 .....App. 328

Entry Overruling Motion to Reconsider, Court of Appeals, First Appellate District of Ohio, Entered July 13, 2001.....App. 329

Entry Striking Filing of July 24, 2001, Court of Appeals, First Appellate District of Ohio, Entered August 10, 2001.....App. 330

Entry of Dismissal, **C-010498**, Court of Appeals, First Appellate District, Entered August 17, 2001 .....App. 334

APPENDIX B, Domestic Relations Orders

Certificate:

Order Dismissing Motion to Strike, Court of Common Pleas, Division of Domestic Relations, Entered July 24, 2001.....App. 331

Order Dismissing Plaintiff/Appellant/Petitioner's Motion Invoking Limited Jurisdiction & Motion for Findings of Fact on Federal Claims, Court of Common Pleas, Division of Domestic Relations, Hamilton County, Ohio, Entered July 24, 2001.....App. 332

Order for Submission and Determination Without Oral Hearing, Court of Common Pleas, Division of Domestic Relations, Hamilton County, Ohio, Entered June 4, 2001 .....App. 333

TABLE OF CONTENTS – Continued

Page

Merits:

T.d. 345, Decision, Court of Common Pleas, Division of Domestic Relations, Entered January 26, 2000 .....App. 16

Filing Regarding Plaintiff's Emergency Motion Filed on January 24, 2000, Court of Common Pleas, Division of Domestic Relations, Entered January 26, 2000.....App. 18

T.d. 342, Final Decree of Shared Parenting, Court of Common Pleas, Division of Domestic Relations, Entered December 30, 1999 .....App. 20

Exhibit C, Amended Shared Parenting Plan, Court of Common Pleas, Division of Domestic Relations, Filed September 16, 1999 .....App. 22

Mother is court ordered sole decision maker on children's educational issues..... App. 39, #9.2

Exhibit D, Entry Adopting Father's Proposed Second Amended Shared Parenting Plan, Court of Common Pleas, Division of Domestic Relations, Filed September 22, 1999 .....App. 54

QMCSO, T.d. 342, O.R.C. §3113.215(B)(5)(f)/ 3113.217, Standing Order Allocating Extraordinary Expenses (App. 407).....App. 57

T.d. 341, Judgment Entry Decree of Divorce, Court of Common Pleas, Division of Domestic Relations, Entered December 30, 1999 .....App. 67

Exhibit A, Property Settlement Stipulations, Court of Common Pleas, Division of Domestic Relations, Filed May 6, 1997 .....App. 74

TABLE OF CONTENTS – Continued

Page

Exhibit B, Addendum to Property Settlement Stipulations, Court of Common Pleas, Division of Domestic Relations, Filed August 23, 1999.....App. 117

Exhibit C, Stipulations: Father's Trusts' Expert Witnesses & Testimony, & Post Trial Proffers, Court of Common Pleas, Division of Domestic Relations, Filed July 29, 1997 .....App. 120

T.d. 340, Entry, Court of Common Pleas, Division of Domestic Relations, Entered December 30, 1999 .....App. 126

T.d. 331, Addendum to Decision on Objections, Court of Common Pleas, Division of Domestic Relations, Entered November 29, 1999 .....App. 127

T.d. 330, Decision, Court of Common Pleas, Division of Domestic Relations, Filed November 17, 1999 .....App. 130

T.d. 325, Decision on Motion to Set Aside an Objection to 9/1/99 Findings, Court of Common Pleas, Division of Domestic Relations, Filed November 1, 1999 .....App. 132

T.d. 324, Decision Granting Motion to Set Merits Hearing, Court of Common Pleas, Division of Domestic Relations, Entered November 1, 1999 .....App. 134

T.d. 319, Order for Submission and Determination Without Oral Hearing of Defendant's Motion to Set Merits Hearing, Court of Common Pleas, Division of Domestic Relations, Entered September 22, 1999 .....App. 135

TABLE OF CONTENTS – Continued

Page

T.d. 318, Entry Adopting Father's Proposed Second Amended Shared Parenting Plan, Court of Common Pleas, Division of Domestic Relations, Filed September 22, 1999 .....App. 136

T.d. 317, Motion to Set Merits Hearing, Court of Common Pleas, Division of Domestic Relations, Filed September 21, 1999 .....App. 137

T.d. 315, Correction to Decision and Orders Entered of Record September 1, 1999, Court of Common Pleas, Division of Domestic Relations, Entered September 3, 1999.....App. 139

T.d. 314, Decision and Orders, Court of Common Pleas, Division of Domestic Relations, Entered September 1, 1999 .....App. 141

Decision *against Mother's federal constitutional claims* raised in closing argument (T.d. 193, 3/18/98 which includes written closing arg, plus five binders of cases docketed together), overruling obj. with preservation of federal constitutional violations (T.d. 202, 9/9/98 with three binders (all filled with constitutional claims fully argued) *timely filed*, but belatedly docketed, T.d. 345, 346, 347).....App. 150, #7

Holding, Civ. R. 53's (App. 372) compulsory requirement compels court *to rule on objections* generating reviewable orders on all obj. (T.d. 193) (Civ. R. 7 (App. 367) procedural defect not *adequate*) .....App. 144, #5

Entry, Court of Common Pleas, Division of Domestic Relations, Filed August 23, 1995 .....App. 153

TABLE OF CONTENTS – Continued

Page

T.d. 313, Decision – Plaintiff's Motions of July 24 and 26, 1999, Court of Common Pleas, Division of Domestic Relations, Filed September 1, 1999 ..... App. 155

Entry Order, Court of Common Pleas, Division of Domestic Relations, Entered September 1, 1999 ..... App. 158

T.d. 312, Decision, Court of Common Pleas, Division of Domestic Relations, Entered September 1, 1999 ..... App. 159

Order, Court of Common Pleas, Division of Domestic Relations, Entered August 19, 1999 ..... App. 160

T.d. 311, Decision Denying Motion *deciding against federal claims* for Preemption, Supremacy, Vagueness, FFCCSOA, et al. (mot., T.d. 303), Court of Common Pleas, Division of Domestic Relations, Filed September 1, 1999..... App. 165

T.d. 310, Court Requested Changes to Father's Proposed Amended Shared Parenting Plan of November 20, 1998, Court of Common Pleas, Division of Domestic Relations, Entered September 1, 1999 ..... App. 166

T.d. 285, Decision Denying Motion for Summary Judgment *deciding in favor of* Father's federal Equal Protection Legislative Classification defense (married parents can't be ordered to pay educational and college support, so parents splitting up can't be ordered to pay) (mot, T.d. 228, 250, 254, 257, 1/29/99; memo, T.d. 257, 2/1/99, p. 2, #1; et al.), Court of Common Pleas, Division of Domestic Relations, Entered April 30, 1999 ..... App. 168

TABLE OF CONTENTS – Continued

Page

T.d. 284, Decision, denying certification of class action, Court of Common Pleas, Division of Domestic Relations, Entered April 30, 1999..App. 169

T.d. 283, Decision on Allocation of College Expenses, Court of Common Pleas, Division of Domestic Relations, Filed April 30, 1999 ....App. 170

VOLUME II

T.d. 233, Findings of Fact and Conclusions of Law, Court of Common Pleas, Division of Domestic Relations, Entered December 29, 1998.....App. 176

Stipulations, Court of Common Pleas, Division of Domestic Relations .....App. 189

Stipulations Exhibit A: Shared Time Schedule, Court of Common Pleas, Division of Domestic Relations .....App. 192

Stipulations Exhibit B: Summary of Father's Mental/Psychological History, Court of Common Pleas, Division of Domestic Relations .....App. 208

T.d. 201, Magistrate's Decision with Findings of Fact and Conclusions of Law, Court of Common Pleas, Division of Domestic Relations, Entered August 29, 1998 .....App. 231

T.d. 189, Entry, Court of Common Pleas, Division of Domestic Relations .....App. 250

T.d. 149, Magistrate's Order of Common Pleas, Division of Domestic Relations, Filed July 17, 1997 .....App. 252

TABLE OF CONTENTS – Continued

Page

T.d. 140, Decision Allocating Parental Rights and Responsibilities, Court of Common Pleas, Division of Domestic Relations, Filed May 23, 1997 .....App. 254

Extract of T.d. 23, Order Allocating Parenting Rights and Support, Pendente Lite (75M), Court of Common Pleas, Division of Domestic Relations, Entered December 14, 1994 .....App. 418

Extract of T.d. 203, Temporary QMCSO, Entered September 14, 1998 .....App. 421

APPENDIX B1, Hamilton County Clerk of Court

G.O.P. Mailing Touts Clerk's Website.....App. 257

Clerk's Webpage of downloadable documents, DR 02798, Printed January 27, 2000.....App. 425

APPENDIX C, Supreme Court of Ohio Orders

Entry, 00-2117, The Supreme Court of Ohio, Filed December 20, 2000 .....App. 259

Entry, 00-2117, The Supreme Court of Ohio, Filed February 14, 2001 .....App. 260

Reconsideration Entry, 00-2117, The Supreme Court of Ohio, Filed April 4, 2001.....App. 261

Certificate:

Entry, 00-2117, The Supreme Court of Ohio, Filed July 16, 2001 .....App. 335

Entry, 00-2117, The Supreme Court of Ohio, Filed July 26, 2001 .....App. 336

Docket Entries of The Supreme Court of Ohio in **Case 01-1231**, Filed July 6, 2001 .....App. 338

TABLE OF CONTENTS – Continued

Page

Earlier Ancillary:

Entry, 00-2254, The Supreme Court of Ohio, Filed January 17, 2001 ..... App. 262

Entry, 00-2254, The Supreme Court of Ohio, Filed February 22, 2001 ..... App. 263

Reconsideration Entry, 00-2254, The Supreme Court of Ohio, Filed March 19, 2001 ..... App. 264

Entry, 00-545, The Supreme Court of Ohio, Filed April 19, 2000 ..... App. 337

Entry, 00-545, The Supreme Court of Ohio, Filed June 14, 2000 ..... App. 265

APPENDIX D, Statutory Provisions

20 U.S.C. §§1400-1485+, Individuals with Disabilities Educ. Act ..... *Inc. by Ref.*

26 U.S.C.A. §529 (prepaid college) ..... App. 348

Pending Legislation to 26 U.S.C.A. §529 Qualified State Tuition Programs ..... App. 357

28 U.S.C. §1738B, Full Faith And Credit For Child Support Orders Act ..... App. 266

United States Public Laws, 103rd Congress – Second Session, Full Faith and Credit for Child Support Orders Act, Convening, January 25, 1994 ..... App. 275

28 U.S.C.A. §2403(a-b) (interveners) ..... App. 363

Title IV, Social Security Act, 88 Stat. 2351 (1995), 42 U.S.C. §§ 601 *et seq.*, 651 *et seq.* ..... *Inc. by Ref.*

5 U.S.C.A. §551 (federal courts exempted) ..... App. 346

TABLE OF CONTENTS – Continued

Page

42 U.S.C.A. §405(c)(2)(C)(ii) (use of social security numbers).....App. 364

42 U.S.C.A. §405(c)(2)(C)(viii)(I) (use of social security numbers).....App. 365

5 U.S.C. §552a, Records maintained on individuals, The Privacy Act of 1974.....App. 283

Congressional Findings and Statement of Purpose, Section 2 of Pub.L. 93-579.....App. 317

Construction of 1988 Amendments, Section 9 of Pub.L. 100-503.....App. 319

Disclosure of Social Security Number, Section 7 of Pub.L. 93-579, Privacy Act.....App. 320

Disclosural Privacy:

APPENDIX E, United States Constitutional Provisions

United States Constitution Article I, Section 8, clause 1 (General Welfare, Spending).....App. 323

United States Constitution Article I, Section 8, clause 3 (Commerce).....App. 323

United States Constitution Article I, Section 8, clause 18 (Necessary and Proper).....App. 323

United States Constitution Article I, Section 10, clause 1 (Obligation of Contracts).....App. 323

United States Constitution Article IV, Section 1, clause 1 & clause 2 (Full Faith and Credit) ...App. 324

TABLE OF CONTENTS – Continued

Page

United States Constitution Article IV, Section 2, clause 1 (Privileges and Immunities).....App. 324

United States Constitution Article VI, clause 2 (Supremacy).....App. 324

AMENDMENTS (rights listed are not intended to be comprehensive)

First Amendment (rights and freedoms include, inter alia, freedom of speech, belief, assembly, free exercise of religion, associational rights, right to choose, right to maintain the parental relationship, right to appropriate education, right to educational benefits, freedom to petition the government for a redress of grievances, equal justice, children's right to the exercise of the parental, state, nations' duty to educate, right to continue familial bonds; right to travel).....App. 324

Fourth Amendment (civil privacy expectations preclude intrusions by state).....App. 325

Ninth Amendment (unenumerated rights including rights imbued via Declaration of Independence, *Troxel v. Granville* (2000) 120 S.Ct. 2054, ___, (SCALIA, dissenting)).....App. 325

Tenth Amendment (federalism).....App. 325

Fourteenth Amendment, Section 1 (Citizenship, Privileges or Immunities, Due Process, Equal Protection clauses) (Equal protection, gender discrimination; personal rights, privileges; legislative classifications; sibling discrimination; age, wealth, socio economic discrimination; right to travel) right to equal citizenship, et al).....App. 326

TABLE OF CONTENTS – Continued

Page

Fourteenth Amendment, Section 5 (Congressional powers to enforce by appropriate legislation)..App. 326

Twenty-Sixth Amendment, Section 1 (effective political participation includes rights to appropriate educational benefits from state, nation, and parents; age discrimination in educational benefits).....App. 326

Twenty-Sixth Amendment, Section 2 (Congressional powers to enforce).....App. 326

APPENDIX F, Extensions of Time and Select Communications

Excerpt from The Hannah Report of June 11, 1997 on the Senate Judiciary.....App. 439

Letter of September 9, 1997 to Bardes from George Voinovich Governor, State of Ohio.....App. 430

Letter of September 4, 1998 to Bardes from Susan Sloan with the Ohio Tuition Trust Authority .....App. 431

Letter of September 18, 1998 to Bardes from Theodore Adams, Assistant Attorney General, State of Ohio .....App. 434

Letter of January 13, 1999 to Bardes from Susan Sloan, Director of Operations, Ohio Tuition Trust Authority, with copy of Judge Edwards, Stark Cty, OH, Judgment Entry (ordering acquisitn. of O.T.T.A., 26 U.S.C. §529, prepaid college credits in a case where parents agreed) ..App. 436

Letter of March 15, 1999 to Bardes from Loretta Weinberg, Assemblywoman, District 37, New Jersey General Assembly .....App. 339

TABLE OF CONTENTS – Continued

Page

Letter of June 12, 2001 to Clerk, Court of Appeals of Ohio from Loretta Ruffin, Assistant Clerk, U.S. Supreme Court .....App. 341

Letter of July 18, 2001 to Bardes from Loretta Ruffin, Assistant Clerk, U.S. Supreme Court.....App. 343

Letter of July 26, 2001 to Bardes from Anthony J. Steinmeyer, Assistant Branch Director, U.S. Department of Justice .....App. 345

Student Fees Form, City School District of the City of Cincinnati, August 2001.....App. 429

Procedural Defect Inadequate to Derail Federal Jurisdiction Over Disclosural Rights .....App. 440

APPENDIX G, Rules

Fed. R. Civ. Proc. 23 (class action) .....App. 366

Civ. R. 7 (motion procedural defect) .....App. 367

Civ. R. 23 (issues class action) .....App. 368

App. R. 30 (clerks' duties).....App. 371

Civ. R. 53 (must rule on objections).....App. 372

APPENDIX H, Ohio Statutes

Court clerks, exempt records

R.C. §149.43 .....App. 379

R.C. §2303.03 .....App. 381

R.C. §2303.08 .....App. 383

R.C. §2303.26 .....App. 384

R.C. §2303.31 .....App. 385

TABLE OF CONTENTS – Continued

Page

TITLE 31 (two versions+)

R.C. §3103.03(A),(D);(B) [12/99 vers.].....App. 386

R.C. §3105.011 (equity powers/jurisd.) .....App. 388

R.C. §3105.10(B) (sep. agrmts.).....App. 389

R.C. §3105.21; also (D) [12/99 vers.] .....App. 390

R.C. §3105.65(B) (powers in dissolutn.).....App. 392

R.C. §3109.01 (gen. age majority).....App. 393

R.C. §3109.03 (parental equality) .....App. 394

R.C. §3109.04(A-B),(E-F),(G),(J) .....App. 395

R.C. §3109.05(A),(E) [12/99 vers.] (powers) ....App. 399

R.C. §3109.401(A-B) (legislative findings).....App. 403

R.C. §3113.21(G)(4)(a) (former 3119.88) .....*Inc. by Ref.*

R.C. §3113.215 [12/99 vers.].....App. 405

R.C. §3119.01(C)(4) [3113.215(A)(12)].....App. 406

R.C. §3119.05(F) [intact 3113.215(B)(5)(f)].....App. 407

R.C. §3119.24 [intact 3113.215(B)(6)] .....App. 408

R.C. §3119.82 [Revised 3113.21(C)(1)(e)] .....App. 410

R.C. §3113.21(C)(1)(e) (tax/support) .....App. 411

R.C. §3105.171(F)(6),(8),(I) (tax/prop.) .....App. 412

R.C. §3119.86 (legislative emancipation) .....App. 414

In earlier version (note duration of Authority Consolidated 3109.05(E) and 3105.21(D); 3103.03(B) intact) .....App. 415

R.C. §3119.88 (legislative findings) .....App. 417

[SEAL] **Attorney General**
Betty D. Montgomery

August 29, 2001

Dee Ellen Garrison Bardes
1035 Paxton Avenue
Cincinnati, OH 45208-2828

Dear Ms. Bardes:

I received the packet of materials about your lawsuit against Mr. Todd. As promised in our telephone conversation, I had an individual from our Health and Human Services section review the materials for potential interest.

However, after review, it has been concluded that this office has no interest in intervening in your case at this time. If the United States Supreme Court does grant a writ of certiorari in this case, please let me know, and our office will reevaluate the case at that time.

In addition, if there is any way in which I can be of further help to you, please let me know.

Sincerely,

BETTY D. MONTGOMERY
Attorney General

/s/ Elise Porter
ELISE PORTER
Senior Attorney
Chief Counsel's Staff
Ohio Attorney General's Office
30 East Broad Street, 17th Floor
Columbus, OH 43215-3428

APPENDIX A

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES, Plaintiff-Appellant, vs. SAMUEL POGUE TODD III, Defendant-Appellee.	APPEAL NO. C-000055 TRIAL NO. DR-9402798 OPINION (FILED OCT. 13, 2000)

Civil Appeal From: Hamilton County Court of Common Pleas, Division of Domestic Relations
Judgment Appealed From Is: Affirmed
Date of Judgment Entry on Appeal: October 13, 2000

Dee Ellen Garrison Bardes, pro se,
Law Offices of Strauss & Troy and *William S. Abernethy, Jr.,* for Appellee.

PAINTER, Judge.

In August 1994, plaintiff-appellant Dee Ellen Bardes filed for divorce, seeking to terminate her six-year marriage to defendant-appellee Samuel Todd and to gain custody of the couple's two children, then ages four and three. In December of 1999, the trial court entered a decree of divorce that incorporated prior property-settlement stipulations, as well as a final decree of shared

parenting that adopted an amended plain submitted by Todd. Bardes has filed a timely appeal to this court in which she raises six assignments of error.

Since 1994, this case has generated a massive record. The sheer number of motions, and their voluminous, multi-faceted exploration of issues, is testament to a vast consumption of time and resources on the part of the parties, as well as associated court personnel. We wish to commend the trial court's patience and diligence in providing Bardes, proceeding *pro se* since 1996, with every opportunity to be heard on issues in which she clearly holds a deep conviction. We hope today, however, to finally decide these issues and to close this case so that all parties may move forward with their lives. To this end, we overrule Bardes's assignments of error and affirm the judgment of the trial court.

Unless otherwise stated below as required by a particular assignment of error, we review a domestic relations court's determinations according to an abuse-of-discretion standard.[1] In order to recognize an abuse of discretion, we must be confronted with more than an error of judgment.[2] Rather, there must be no sound reasoning process to support the trial court's decision.[3]

---

[1] *Booth v. Booth* (1989), 44 Ohio St.3d 142, 144, 541 N.E.2d 1028, 1030.

[2] *Id.*

[3] *AAAA Ent., Inc. v. River Place Community Urban Redevelopment Corp.* (1990), 50 Ohio St.3d 157, 161, 553 N.E.2d 597, 601; *State v. Echols* (1998), Ohio App.3d 677, 700, 716 N.E.2d 728, 744.

I. The Dependency Exemptions

Bardes first assigns as error the trial court's distribution between the parents of the minor children's tax dependency exemptions and tax credits in the shared-parenting plan adopted by the court. Bardes does not dispute the method of allocation itself, which was in accordance with the parties' 1997 property-settlement stipulations. Rather, she claims that because the tax dependency exemptions and tax credits were originally characterized as property by the parties, the trial court had no authority to include them in the shared-parenting plan. The net effect to which Bardes objects is that their inclusion in the shared-parenting plan made the exemptions and credits in the nature of child support, and therefore subject to the continuing jurisdiction of the trial court. By contrast, matters of property distribution, as agreed by the parties and adopted by the trial court, are not typically subject to the continuing jurisdiction of the court.

We uphold the decision of the trial court for two reasons. First, R.C. 3113.21(C)(1)(e) provides in pertinent part that "[w]henever a court modifies, reviews, or otherwise reconsiders a child support order, it may reconsider which parent may claim the children who are the subject of the child support order as dependents for federal income tax purposes * * * ." The statute makes no exception for exemptions previously allocated and characterized as property by agreement of the parties. To the extent that a private contract clause seeks to circumvent a statutory grant of authority that is based on public policy,

the clause is void.[4] We hold that the clause in the parties' property-settlement stipulations that seeks to characterize dependent tax exemptions as property is void as contrary to statutory authority based on public policy, but only to the extent the characterization seeks to avoid the continuing jurisdiction of the trial court. The trial court did not abuse its discretion in placing the agreed allocation of dependent tax exemptions in the adopted shared-parenting plan.

Second, there would be no error even absent the clear statutory authority granted to the trial court. While the Ohio Supreme Court initially had characterized dependency exemptions as marital property,[5] upon reconsideration in the context of continuing jurisdiction, the court modified the *Hughes* syllabus in *Singer v. Singer*[6] to delete any reference to marital property. In *Singer*, the court considered circumstances that predated the then recently enacted R.C. 3113.21. The court held that the juvenile court retained jurisdiction over its orders concerning custody, care, and support of children, even when the court's initial order was based on an agreement between the parents of the child.[7] Determining that the allocation of a tax exemption concerned the support of the child, the

---

[4] See *Disciplinary Counsel v. Coleman* (2000), 88 Ohio St.3d 155, 158, 724 N.E.2d 402, 404; *Bell v. N. Ohio Tel. Co.* (1948), 149 Ohio St. 157, 158, 78 N.E.2d 42, 43; *Marsh v. Lampert* (1998) 129 Ohio App.3d 685, 687, 718 N.E.2d 997, 998.

[5] *Hughes v. Hughes* (1988), Ohio St.3d 165, 518 N.E.2d 1213, paragraph one of the syllabus.

[6] *Singer v. Singer* (1992), 63 Ohio St.3d 408, 413, 588 N.E.2d 806, 810.

[7] *Id.* at 413, 588 N.E.2d at 810-811.

court reasoned that an artificial distinction would be created if orders to pay support were modifiable but orders allowing a dependency exemption were not.[8]

Bardes's first assignment of error is overruled.

II. The Class Action

Bardes's second assignment of error concerns the trial court's denial of two motions that we construe collectively as a motion for class-action certification under Civ.R. 23(A) and (B)(2), or (B)(3). Bardes sought the certification of a class to be known as "Ohio Mothers," who were or would be "subject to" R.C. 3109.05, 3113.215, 3103.03, and 3105.21, and R.C. Chapter 3111. These statutes relate generally to support obligations, orders for support of children, and parentage, respectively.

We begin by noting, as we have recently, that the broad discretion of a trial court in determining whether a class action may be maintained will not be disturbed on appeal absent a showing of an abuse of discretion.[9] Particularly where the trial court has decided not to certify a class, an abuse of discretion should be recognized cautiously.[10] We also note, however, that while it is not mandatory for a trial court to make formal findings in support of its decision on a motion for class certification,

---

[8] *Id.* at 414, 588 N.E.2d at 811.

[9] *Hinkston v. The Finance Co.* (May 12, 2000), Hamilton App. No. C-980972, unreported, quoting *Marks v. C.P. Chem. Co., Inc.* (1987), 31 Ohio St.3d 200, 509 N.E.2d 1249, syllabus.

[10] *Hinkston*, supra, quoting *Marks*, supra, at 201, 509 N.E.2d at 1252.

the Ohio Supreme Court has suggested that the court make separate findings as to each of the class-action requirements and specify its reasoning as to each finding.[11] Similarly, it is rare that the pleadings in a case requesting class certification are so clear that it is possible to determine whether certification is proper without first conducting a hearing.[12] This is one of those rare cases in which neither an evidentiary hearing nor separate findings on the part of the trial court are necessary for this court to uphold the trial court's decision.

To have a class action certified, the plaintiff must show that all of the seven requirements of Civ.R. 23(A) and (B) are met, and the failure of any one of those seven requirements will result in the denial of certification.[13] The seventh requirement of class certification is that one of the three Civ.R. 23(B) requirements be met.[14] Without deciding whether Bardes's proposed class meets the initial six requirements, we hold that the trial court did not abuse its discretion by denying certification based only on Bardes's request to certify the class under Civ.R. 23(B)(2) or (3).

Civ.R. 23(B)(2) requires that "the party opposing the class has acted or refused to act on grounds generally

---

[11] *Hamilton v. Ohio Sav. Bank* (1998), 82 Ohio St.3d 67, 70-71, 694 N.E.2d 442, 447. See, also, *Isaak v. Trumbull S. & L. Co.* (Aug. 4, 2000), Trumbull App. No. 99-T-0077, unreported.

[12] *Warner v. Waste Mgt., Inc.* (1988), 36 Ohio St.3d 91, 98-99, 521 N.E.2d 1091, 1098.

[13] *Hinkston*, supra, citing *Schmidt v. Avco Corp.* (1984), 15 Ohio St.3d 310, 313, 473 N.E.2d 822, 824.

[14] *Hamilton*, supra, at 71, 694 N.E.2d at 448.

applicable to the class, thereby making appropriate injunctive relief or corresponding declaratory relief with respect to the class as a whole." From the record, it is clear that Todd has merely asserted his rights under the Revised Code. Not only is injunctive or declaratory relief inappropriate as to Bardes under these circumstances, but Todd would also clearly be unable to satisfy any judgment as to all the Ohio mothers proposed as a class.

For a class to be certified under Civ.R. 23(B)(3), the trial court must find, among other things, that "a class action is superior to other methods for the fair and efficient adjudication of the controversy." Again, from the record, it is clear that whatever exception Bardes has taken to Todd's position on matters of child support, the controversy is best adjudicated only between the original parties.

Bardes's second assignment of error is overruled.

III. Release of Personal Data

In her third assignment of error, Bardes complains that the trial court erred in not obtaining the consent of the parties for release of personal data, and by failing to adopt measures that would prevent the release of personal data filed with the court.

The Ohio Supreme Court has held that "[a]ny document appertaining to, or recording of, the proceedings of a court * * * is a 'public record' and 'required to be kept' within the meaning of R.C. 149.43. Absent any specific statutory exclusion, such record must be made available

for public inspection."[15] More recently, however, the court has ruled that Social Security numbers are exempt from the Public Records Act under R.C. 149.43(A)(1) and subject to the federal constitutional right to privacy.[16] When it is ordered under the Public Records Act to disclose documents containing a Social Security number, the appropriate remedy is for the concerned party to move the court to direct the clerk of courts to redact the Social Security number.[17]

After a review of the record, we can find no denied motion that could be characterized as a motion for redaction of Social Security numbers. We also find no motion to have Bardes's record sealed. Consequently, there is no action on the part of the trial court for us to review.

We also note that if Bardes's third assignment of error is intended to be a general complaint regarding the policies of the clerk of courts, it is inappropriately raised here. Todd is not the appropriate party to defend a legal challenge regarding the policies and procedures of the clerk of courts, and the clerk of courts is not a party to this action.

---

[15] *State ex rel. Mothers Against Drunk Drivers v. Gosser* (1985), 20 Ohio St.3d 30, 485 N.E.2d 706, paragraph one of the syllabus.

[16] *State ex rel. WLWT-TV5 v. Leis* (1997), 77 Ohio St.3d 357, 361, 673 N.E.2d 1365, 1369, citing *State ex rel. Beacon Journal Publishing Co. v. Akron* (1994), 70 Ohio St.3d 605, 640 N.E.2d 164.

[17] See, generally, *State ex rel. Barth v. Kapla* (Apr. 13, 1993), Cuyahoga App. No. 62406, unreported, 1993 WL 120249.

The third assignment of error is not well taken.

IV. Private Schooling and College Education

In her final three assignments of error, Bardes raises various issues about the failure of the trial court to order Todd to share in the current cost of private-school education for the minor children, and to contribute to the minor children's future college education.

Bardes first asks this court to hold that her children's constitutional rights have been violated. We find no case law to support a holding that paid attendance at a private school or college of one's choice is a fundamental right guaranteed by the Constitution, even for the most gifted of children. We decline the invitation to create a novel fundamental right.

Next, Bardes asks us to hold that her constitutional rights have been violated. Again, we find no case law to support the proposition that Bardes has a fundamental right to be reimbursed for payment of private school or future college tuition in the furtherance of her children's education. We again decline the invitation to invent a novel fundamental right.

Finally, Bardes seems to be unclear as to whether the trial court properly issued a valid separate order for extraordinary medical expenses. She is also unclear whether payment by Todd towards expenses for private education and future college tuition for the minor children were included in the order. If no order issued from the trial court requiring Todd to share in the minor children's private school and future college expenses, then Bardes claims the trial court abused its discretion.

R.C. 3113.215(B)(5)(f) appears to be the source of Bardes's confusion. This statute provides in pertinent part that while the trial court shall not order additional child support for normal uninsured medical or dental expenses beyond that child support assessed in conformance with the appropriate schedule, "[t]he court shall issue a separate order for extraordinary medical or dental expenses, including but not limited to, orthodontia, psychological, appropriate private education, and other expenses, and may consider the expenses in adjusting a child support order."

From the record, it appears clear that the trial court did issue an appropriate separate order for allocation of extraordinary uninsured medical, dental, hospital, prescription, optical, and orthodontic expenses. It also appears clear that the trial court intentionally did not issue a separate order requiring Todd to share in the costs of the children's private-school education. Instead, in the decree of divorce, the court specifically stated that Todd would not be required, until further order of the court, to contribute to the cost of private elementary or secondary education for the parties' children. This section of the decree specifically adopted the decision of the magistrate.

There was no abuse of discretion by the trial court in adopting the magistrate's decision. The record states that, as a result of the parties' stipulations, Todd's disposable income after total expenses was $179 per month, or $2,148 per year. We conclude that the court's decision to exempt Todd under those circumstances from sharing in private-school tuition fees of over $15,000 per year was supported by sound reasoning.

It also appears clear from the record that Todd is under no current court-ordered obligation to set aside or otherwise allocate money for the benefit of his children's future college expenses. There was no abuse of discretion in the trial court's failure to order Todd to make such an allocation. Indeed, the court would have erred had it done so. It is well settled in Ohio that, without the specific agreement of the parties and the adoption of the specific agreement by the trial court, the trial court has no authority to order that money be set aside for the future college expenses of a minor child, when the money would be used only after the child reaches the age of majority.[18]

Bardes's remaining assignments of error are overruled, and the trial court's judgment is, accordingly, affirmed.

Judgment affirmed.

HILDEBRANDT, P.J., and SUNDERMANN, J., concur.

Please Note:

The court has recorded its own entry on the date of the release of this Opinion.

---

[18] *Miller v. Miller* (1951), 154 Ohio St. 530, 97 N.E.2d 213, paragraph two of the syllabus; *Sylvester v. Sylvester* (1969), 21 Ohio App.2d 58, 254 N.E.2d 699; *Pratt v. McCullough* (1995), 100 Ohio App.3d 479, 482-483, 654 N.E.2d 372, 374; *Bailey v. Mitchell* (1990), 67 Ohio App.3d 441, 442-443, 587 N.E.2d 358, 359; *Maphet v. Heiselman* (1984) 13 Ohio App.3d 278, 279, 469 N.E.2d 92, 94; *Verplatse v. Verplatse* (1984), 17 Ohio App.3d 99, 101, 477 N.E.2d 648, 652.

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES,	:	APPEAL NO. C-000055 TRIAL NO. DR-9402798
Plaintiff-Appellant,	:	JUDGMENT ENTRY (FILED OCT. 13, 2000)
vs.	:	
SAMUEL POGUE TODD III,	:	
Defendant-Appellee.	:	

This cause having been heard upon the appeal, the record and briefs filed herein and arguments and

Upon consideration thereof, this Court Orders that the judgment of the trial court is affirmed for the reasons set forth in the Opinion filed herein and made a part hereof.

Further, the Court holds that there were reasonable grounds for this appeal, allows no penalty and Orders that costs are to be taxed in compliance with App. R. 24.

The Court further Orders that 1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and 2) the mandate be sent to the trial court for execution pursuant to App. R. 27.

To The Clerk:

Enter upon the Journal of the Court on October 13, 2000 per Order of the Court.

By: /s/ Hildebrandt
Presiding Judge

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES

Appellant,

vs.

SAMUEL POGUE TODD III

Appellee,

APPEAL NO. C-000055

ENTRY OVERRULING MOTION TO CERTIFY CONFLICT, OVERRULING APPLICATION FOR RECONSIDERATION, OVERRULING MOTION TO STAY, AND STRIKING FILING

(FILED NOV. 3, 2000)

This cause came on to be considered upon the PRO SE motion of the appellant filed herein for an Order of this Court to certify this appeal to the Ohio Supreme Court as a conflict and upon the application for reconsideration; and upon the PRO SE motion to stay execution of the judgment pending further appeal, and

The Court, upon consideration thereof, finds that the motions and application are not well taken and are overruled.

Further, the transcript of the hearing held in this Court on September 19, 2000 having been filed on October 19, 2000 and docketed as "Appearances" is hereby stricken as there is no provision with the rules to file same.

To The Clerk:

Enter upon the Journal of the Court on 11/3/00 per order of the Court.

By: /s/ Hildebrandt (Copies sent to all
Presiding Judge counsel)

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES

Appellant,

vs.

SAMUEL POGUE TODD III

Appellee,

APPEAL NO. C-000055

ENTRY OVERRULING MOTION FOR STAY AND APPLICATION FOR RECONSIDERATION

This cause came on to be considered upon the PRO SE motion of the appellant filed herein for a Stay and upon the PRO SE application for reconsideration, and

The Court, upon consideration thereof, finds that the motion and application are not well taken and are overruled.

To The Clerk:

Enter upon the Journal of the Court on 12/1/00 per order of the Court.

By: /s/ Hildebrandt
Presiding Judge

(Copies sent to all counsel)

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES Appellant, vs. SAMUEL POGUE TODD III Appellee,	APPEAL NO. C-000055 ENTRY OVERRULING MOTION TO COMPEL CLERKS TO REDACT PRIVATE DATA PRIOR TO SCANNING OR AVAILING PUBLIC ACCESS, OR IN THE ALTERNATIVE NOT TO SCAN DOCUMENTS CONTAINING PRIVATE DATA, OR IN THE ALTERNATIVE TO SEAL APPENDIX TO BRIEF (ENTERED JUNE 2, 2000)

This cause came on to be considered upon the PRO SE motion of the appellant filed herein to; compel clerks to redact private data prior to scanning or availing public access, or in the alternative to not scan documents containing private data, or in the alternative to seal appendix to brief containing personal data and the supplemental motion and memo filed herein on May 24, 2000

The Court, upon consideration thereof, finds that the motion is not well taken and is overruled.

To The Clerk:
Enter upon the Journal of the Court on 6/2/00 per order of the Court.

By: /s/ Hildebrandt
Presiding Judge

(Copies sent to all counsel)

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DEE ELLEN G. BARDES
Appellant
SAMUEL POGUE TODD III
Appellee

APPEAL NO. C-000055
ENTRY STRIKING FILING OF MAY 29, 2001

This cause came on to be considered upon the PRO SE "Plaintiff/appellant/petitioner's Motion invoking limited concurrent jurisdiction & seeking relief to facilitate and enable federal jurisdiction by the United States Supreme Court" filed herein on May 29, 2001, and

The Court *sua sponte* strikes same for failure to comply with the Rules of Appellate Procedure.

To The Clerk:

Enter upon the Journal of the Court on 6/15/01 per order of the Court.

By: Gorman, J. **(Copies sent to all counsel)**
Presiding Judge

APPENDIX B

T.d. 345

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

Dee Ellen Garrison Bardes	:	Case No.: DR9402798
Plaintiff	:	File No: E194749
	:	CSEA No:
– vs. –	:	**DECISION**
Samuel Pogue Todd III	:	Judge Cunningham
Defendant	:	

(ENTERED JAN. 26, 2000)

The above captioned matter came before the Court pursuant to Plaintiff's Emergency Motion filed on January 24, 2000. Defendant, having been duly notified and served with the motion, informed the Court by entry filed January 27, [sic] [26] 2000 that he will not be filing a response to the motion (see attached entry). The Court shall consider Plaintiff's motion without oral hearing pursuant to Civil Rule 7(B)(2) and without response by Defendant.

Upon consideration of Plaintiff's motion, the Court hereby decides as follows:

1. The Court finds Plaintiff's 11/30/99 motion to set aside is not well-taken and same is hereby denied. Plaintiff's right to appeal any issue is not a matter appropriately before this Court.

2. The Court finds Plaintiff's motion for relief from judgment is not well-taken and same is hereby denied.

3. Plaintiff's objection relative to "modifiability of life insurance" is not well-taken and same is hereby overruled. Father's shared parenting plan provides on page 19 Sec. 15 that this Court "shall retain continuing jurisdiction to modify any and all issues relating to the minor children as set forth herein, except Provision 12, Life Insurance. Jurisdiction over the issue of life insurance is limited to enforcement of said provision."

4. Plaintiff's objection to "continuing duration of health insurance provisions & inaccurate QMCSO" is not well-taken and same is hereby overruled.

5. Plaintiff's request that this Court certify the within action to the Supreme Court of Ohio is not well-taken and is again overruled.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES SS #: 270-52-9846 DOB: 07/21/56 Plaintiff	:	CASE NO: DR9402798 FILE: E 194749 CSEA #AA89964/01 Judge Penelope Cunningham Magistrate William Murphy
vs.	:	FILING REGARDING
SAMUEL POGUE TODD III SS #: 293-56-1656 DOB: 10/9/54 Defendant	:	PLAINTIFF'S EMERGENCY MOTION FILED ON JANUARY 24, 2000

(ENTERED JAN. 26, 2000)

Upon review of Plaintiff's Emergency Motion filed herein on January 24, 2000, Defendant states that he will not file a response to that Motion. Therefore, the Court may rule on that Motion without a response thereto from Defendant.

WHEREFORE, Defendant prays that Plaintiff's Emergency Motion filed January 24, 2000 be overruled.

STRAUSS & TROY

By: William S. Abernethy, Jr.
William S. Abernethy, Jr.
(0002137)
Attorney for Defendant
The Federal Reserve Building
150 East Fourth Street
Cincinnati, Ohio 45202
(513) 621-2120

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed via ordinary U.S. Mail to Ms. Dee Ellen Garrison Bardes, 1035 Paxton Avenue, Cincinnati, Ohio 45208 on this 26th day of January, 2000.

/s/ William S Abernethy, Jr.
William S. Abernethy, Jr.

T.d. 342

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

Dee Ellen Garrison Bardes Plaintiff	ENTER /s/ Cunningham, J.
270-52-9846 7/21/56 SS# DOB	Date 12/2/99
-vs/and-	Case No. A- DR9402798
Samuel P. Todd, III Defendant	File No. E- 194749-0-7
293-56-1656 10/9/54 SS# DOB	CSEA AA: AA89964/01
	Judge: Cunningham
	FINAL DECREE OF SHARED PARENTING

(ENTERED DEC. 30, 1999)

This cause came before the Court on this 2nd day of December 1999 upon the request of the Defendant (Father) for an order granting him shared parental rights and responsibilities for the care of the minor child(ren) namely: Samuel P. Todd, IV (DOB: 2/19/90) and Garrison Bardes Todd (DOB: 9/26/91) and the Second Amended shared parenting plan submitted by the Defendant (Father).

Wherefore, upon review of the plan, the Court approves said plan and grants Final Decree of Shared Parenting to the parties in accordance with the plan attached hereto and incorporated herein.

The Court finds that the plan incorporated into this decree is presently in the best interest of the minor child(ren).

The Court further finds that findings of fact/conclusions of law are not required, are hereby waived by the parties, or have been addressed elsewhere by the Court. This plan is submitted in accordance with O.R.C. § 3109.04 (D) (1) (a) (iii) and is modifiable absent the express agreement of the parties.

This decree is effective as of the date filed or _____ (effective date).

MOTHER Dee Ellen Garrison Bardes, Plaintiff Pro Se	ATTORNEY FOR MOTHER
/s/ Samuel P. Todd, III FATHER Samuel P. Todd, III	/s/ William S. Abernethy, Jr. ATTORNEY FOR FATHER William S. Abernethy, Jr.

T.d. 342

EXHIBIT C

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES	**CASE NO. DR9402798**
	FILE: E 194749-0-7
Plaintiff	Judge Penelope Cunningham
vs.	Magistrate William Murphy
SAMUEL POGUE TODD III	
Defendant	FATHER'S PROPOSED SECOND AMENDED SHARED PARENTING PLAN

(ENTERED DEC. 30, 1999)

THIS FATHER'S PROPOSED SECOND AMENDED SHARED PARENTING PLAN (hereinafter referred to as "Plan") is submitted by Defendant, Samuel Pogue Todd III (hereinafter referred to as "Father") this ___ day of September, 1999, pertaining to the allocation of parental rights and responsibilities between Mother and Father, pursuant to Court requested changes as set forth on the Entry of September 1, 1999;

WITNESSETH:

WHEREAS, the parties hereto are Father and Plaintiff, Dee Ellen Garrison Bardes (hereinafter referred to as

"Mother") having been married at Cincinnati, Ohio on May 26, 1988, and have two children born as issue of their marriage, to wit, Samuel Pogue Todd IV, born February 19, 1990; Garrison Bardes Todd, born September 26, 1991. The parties together have no other issue, living or deceased, and have not adopted any child(ren);

WHEREAS, Father requests that the Court allocate Mother's and Father's parental rights and responsibilities in accordance with this Plan, pursuant to Ohio Revised Code 3109.04(d)(1)(a)(iii), anticipating a sharing of time with the parties' minor children, as further detailed below;

NOW, THEREFORE, Father requests that the court order the following:

1. Physical and Legal Aspects for Care of the Children

1.1 The parties shall share the physical and legal care of their minor children, Samuel and Garrison, all as hereinafter provided. Each party acknowledges that the other is now and always has been a loving, caring parent whose responsibilities as a Mother or Father have always been fulfilled. In the interest of family harmony and for the benefit of the well-being of the children, each party shall encourage their children to love, respect and admire the other parent. Mother and Father shall consult with each other on matters relating to the minor children and shall make decisions relating to such matters in accordance with this Plan. Pursuant to O.R.C. §3109.04(K)(6), each parent, regardless of where either child is physically located or with whom either child is residing at a particular point in time, is hereby specified as the "Residential Parent" and/or the "Residential Parent and Legal Custodian" and/or the "Custodial Parent" of each child.

1.2 Allocation of Time With Each Parent

1.2.1 Routine Schedule

1.2.1.1 Father shall share time with the parties' minor children as follows:

1.2.1.1.1 Every other weekend from 6:00 PM on Thursday to the following Monday morning when Father shall deliver them either to school and or to the location specified by Mother whether the Mother's home, athletic club, child care or other geographically-reasonable destination between 8:00 a.m. and 8:15 a.m.

1.2.1.1.2 Every other Thursday from 6:00 PM until Friday at 6:00 PM. when Father shall deliver the children to the location specified by Mother whether the Mother's home, athletic club, child-care or other geographically reasonable destination; in the event that Mother plans to take the children out-of-town over the weekend, Mother may pick up the children during/after school on Friday with written agreement of Father.

1.2.1.1.3 Mother shall drop the children off at Father's home, athletic club, child-care or other geographically reasonable destination specified by Father on such Thursday evenings, provided however that Father's home is located within seven miles of Mother's home. In the event that Father would relocate to a new residence which is seven miles or more away from Mother's residence, Mother shall optionally elect whether to

drop off the children at Father's new residence or at a geographically reasonable and mutually-agreeable destination. Father shall have the same options for the return of the children in the event that Mother relocates to a new residence, which Mother's new residence is not physically located within seven (7) miles of Father's residence, such present residence's addresses as defined in paragraph 3.1.

1.2.1.1.4 All other time allocated below to Father for vacations and holidays.

1.2.1.2 Mother shall share time with the parties' minor children at all times not specifically allocated herein to Father.

1.2.1.3 Each party shall be responsible for delivering the children to the mutually agreed upon location to end his or her time with the children, unless specifically agreed to otherwise or otherwise provided herein. The parent who has the children at the time shall be responsible for providing transportation for the children to and from school and activities unless other arrangements have been made by the parties.

1.2.2 Vacations & Holidays

1.2.2.1 Vacations

1.2.2.1.1 Each parent is entitled to take the parties' minor children for a maximum of four weeks of vacation during each year, with no vacation to exceed two weeks at a time; vacations may be spent at any location including each

parent's respective homes or elsewhere. A maximum of three of such four weeks may be exercised by either parent during the children's summer school vacation, which generally occurs in the period, June through August. Each parent shall give the other a minimum of thirty days' written notice of his or her intent to exercise this right, including the dates and places for the scheduled vacation(s), if known. The parties acknowledge that this notice is not required for (a) those weekends or weekdays either parent may choose to take the children away during his/her routine schedule set forth above and (b) during his/her holiday schedule set forth below.

1.2.2.1.2 Each parent shall be flexible regarding requests for changes in the routine schedule preceding and or following any vacation, in order to accommodate the non-vacationing parent's need (a) to ready the children for such vacation and or (b) to recover from the children's extended absence by spending extra time subsequent to such vacation with the children and or (c) for any other reasonable reason not specifically set forth herein. It is the parties intent in this paragraph that the non-vacationing parent shall not be unduly penalized.

1.2.2.1.3 Each parent has annually alternating first choice on spending vacation time with the children during

each major school break, including spring break, Christmas break, and summer vacation break; as such, if Father elected to take the children on vacation during Christmas break one year, Mother would have the first choice of spending Christmas vacation time with the children during the following year.

1.2.2.2 Holidays Each party shall exercise his/her right to share time with the children on holidays, as follows:

1.2.2.2.1 Each parent shall have the children on the following holidays:

1.2.2.2.1.1 In even numbered years, Father shall have the children on New Year's Day, President's Day, Memorial Day, Labor Day, Thanksgiving, Christmas Eve, and Christmas Day Late and Mother shall have the children on Martin Luther King Day, Easter, Fourth of July, and Christmas Day Early. In odd numbered years, Mother shall have the children on all holidays that Father had the children in even numbered years, and Father shall have the children on all holidays that Mother had the children in even-numbered years.

1.2.2.2.1.2 Unless the parties otherwise agree, they shall each be entitled to spend reasonable time with both children on each child's respective birthday. Each parent shall advise in advance the other parent of dates, times, locations, and children-invitees

to celebrations planned on or around the dates of the minor children's birthdays; this provision, however, does not imply that the other parent must be invited to attend such celebrations, only that he or she be timely advised in full of their nature.

In the event that the parties would elect to mutually host a celebration, the parties shall equitably share in the costs incurred; should either parent be invited and subsequently attend a celebration hosted by the other parent, this, in itself would not be construed as an agreement to share the costs incurred.

1.2.2.2.1.3 Father shall have the children on Father's Day from 10:00 a.m. to school or until 8 a.m. the next morning. Mother shall have the children on Mother's Day from 10:00 a.m. to school the next morning.

1.2.2.2.1.4 On or near each parent's birthday, each parent shall have the option of whether or not to spend reasonable time with the children on or near each parent's respective birthday. The non-birthday parent shall accommodate the birthday parent's "personal holiday" preferences and schedule.

1.2.2.3 The following hours shall be in effect for all holidays if they fall on a day other than one that is normally that parent's day to be residential parent: The Holiday Period shall be from 10:00 a.m. to

8:00 p.m. for Martin Luther King Day and President's Day. The Thanksgiving Holiday Period shall be from Wednesday at 6:00 p.m. to Friday at 8:00 p.m. the Easter Holiday Period shall be from Saturday at noon until Sunday at 8:00 P.M. The New Years Holiday Period shall be from 12/31 at 6:00 p.m. to 1/1 at 8:00 p.m. the Fourth of July Holiday Period shall be from 10:00 a.m. on the Fourth of July to the next day at 8:00 a.m.; The Memorial Day Holiday Period shall be from Sunday at noon to Monday at 8:00 p.m.; the Labor Day Holiday Period Shall be from Sunday at 6:00 p.m. until Monday at 8:00 p.m.

1.2.2.4 The Christmas Eve Holiday Period shall be from 12/23 at 6:00 p.m. to 12/24 at 9:00 p.m.; The Christmas Day Early Holiday Period shall be from 12/24 at 9:00 p.m. to 12/25 at 4:00 p.m.; the Christmas Day Late Holiday Period shall be from 12/25 at 4:00 p.m. to 12/27 at 6:00 p.m.

2. Miscellaneous Shared Time Provisions

2.1 The provisions set forth above relating to the times in which each parent is to share time with the children shall not preclude the parties from the ability to alter said periods by mutual agreement. The parties shall make every reasonable effort to accommodate each other's schedule, and they will cooperate in the utmost good faith to minimize the difficulties necessarily involved in the upbringing of the minor children where the parties are living separate and apart from each other, and in carrying out their obligations under this Plan, to the end that the relationship of the children with both parents shall be as

harmonious as possible. The parties also recognize, that because this schedule potentially applies many years into the future, it may be necessary from time to time to adjust the time allocation set forth in this Plan.

2.2 Both Father and Mother shall use best efforts to encourage the other parent's relationship with the children. In the event a change in schedule is necessary, the party who needs to change the schedule shall notify the other as soon as possible so as to minimize the conflict and/or problems associated with said schedule change. In the event of a conflict, the following is the order of preference: 1st: Holidays; 2nd: Vacations; 3rd: Weekends; 4th: Midweek Days.

2.3 Neither party has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child, nor has he/she previously been determined, in a case in which a child has been adjudicated an abused child or a neglected child, to be the perpetrator of the abusive or neglectful act that was the basis of the adjudication. Neither parent has ever been a party to a civil or criminal case or investigation concerning child abuse, child neglect or domestic violence regarding the parents' minor children.

2.4 When either parent shall be gone overnight, regardless of the age of the children, the other parent shall be afforded the opportunity to exercise overnight parenting time. If either parent is more than ninety minutes late in returning/picking up the children without calling to make reasonable arrangements and or without just cause may be subject to contempt and or may forfeit that period of time with the children; exception shall be made if, and only if, the tardiness of the parent not sharing time with the

children is for just cause and the parent who is sharing time with the children receives both prompt notification and a reasonable estimated modified arrival/departure time.

2.5 In the case of an unexpected extended illness, which would require either child to stay home from school, both parents agree to be flexible and available, if needed to stay home with a child or children or otherwise equitably accommodate such illness during its duration, even if the illness occurs during days when the children would usually be with the other parent, which care shall be administered in each parent's own residences or in a medical-facility, but not in the other parent's residence, except in the unusual event that an ill child should not be physically relocated.

2.6 Father and Mother shall attempt to employ only non-smoking child care personnel to watch over the minor children. In the event that a child care provider does smoke, he or she must agree not to smoke whatsoever while a child is in his or her care.

2.7 Mother and Father shall continue to live separate and apart from the other, as they have been doing since December 17, 1993. Mother and Father shall each go his or her own way without direction, authority, control or molestation from the other, the same as though unmarried and each further agrees not to interfere with the other in any manner whatsoever. Mother may reside at such place or places, subject to Section 3, as she may elect and may engage for her own separate use or benefit in any employment, business, avocation, relationship and or profession which she may deem advisable. Father may reside at such place or places, subject to Section 3, as he may elect and may engage for his own separate use or benefit in

any employment, business, avocation, relationship and or profession which he may deem advisable.

2.8 Each parent currently provides and shall continue to provide living accommodations such that their minor children shall have a bedroom separate from each parent in his/her respective residence during each child's minority.

2.9 If any child becomes seriously ill or injured or incurs a non-medical emergency during the time that such child is with either parent, that parent shall notify the other as soon as is practical and shall give to the other the details of such illness, injury, or emergency.

2.10 Each parent shall have free and ongoing access to the minor children by telephone at all reasonable times when each child is with the other parent. Each parent shall allow the children to have free and ongoing access to the other parent by telephone at all reasonable times when each child is with the other parent. The parent then sharing time with the minor children should neither discourage nor interfere with any telephone contact initiated or desired by a child.

2.11 Each parent is responsible for providing transportation of the children as specifically set forth herein unless otherwise agreed to by the parties, except in the event that either parent elect or be obligated to temporarily or to permanently relocate to a community outside the Greater Cincinnati area.

3. Removal From Jurisdiction and Relocation Notice

3.1 The current address for Mother is: 1035 Paxton Avenue, Cincinnati, OH 45208-2828. The current address for Father is: 670 Reisling Knoll, Cincinnati, OH 45226. In the event either parent intends to relocate from his/her current residence, that parent shall provide written notification of said intent to the

Court as required in O.R.C. 3109.051 (G); pursuant to Ohio Revised Code 3109.051 (G), the parties hereto are notified as follows: in the event that either parent intends to move to a residence other than the residence specified in the parties' Shared Parenting Plan, that parent shall file a Notice of Intent to Relocate with the Hamilton County Court. Except as provided in ORC 3109.051(G)(2), (3) and (4), a copy of such notice shall be mailed by the Court to the other party. Upon receipt of the notice, the Court, on its own motion or the motion of the other party, may schedule a hearing with notice to both parties to determine whether it is in the best interest of a child to revise the shared time provisions for either child.

3.2 The parties recognize that if either of them should move from this jurisdiction, it will necessarily require a modification or termination of this Plan. Neither party shall remove the minor children from Hamilton County or its contiguous Ohio counties and establish a residence for them in another county without a court order or an agreement signed by both parties and filed with the Court.

4. Grandparents/Extended Family

4.1 Each parent shall always cultivate and nurture the close relationship which the children have with all of their grandparents and great grandparents and any other acting grandparent which may be acquired through a grandparent's remarriage. In the event of Father's premature death or disability, Mother agrees to continue to foster the minor children's relationship with the paternal family members. In the event of Mother's premature death or disability, Father agrees to continue to foster the minor children's relationship with the maternal family members. Any time spent by the children with relatives of Father or Mother shall be accomplished in the manner and during the

periods of Father's or Mother's times as set forth in this Plan. Specific time periods may be assigned by the party entitled to that time to relatives at his or her option.

5. Mediation

5.1 In an effort to maintain the Plan for the benefit and best interests of their minor children, before either party attempts in any way to terminate or modify the Plan, they will, before resorting to any court action, seek mediation in an effort to resolve any disputes that they are unable to resolve between themselves without the aid of a third party. They shall use the services of a mediator chosen by mutual agreement, or if they cannot agree, they shall use the Center for Resolution of Disputes or a like entity. Father and Mother shall attend mediation over a time period comprised of a minimum of thirty (30) days and a maximum of sixty (60) days, per dispute, unless mutually agreed otherwise. Father and Mother shall equitably share the cost of such a process, with the mediator to make the ultimate decision regarding such equitable allocation of such costs in the event and only in the event that Mother and Father cannot agree on such equitable allocation. If the Court finds that a parent has used or frustrated the dispute resolution process without good reason, the Court shall award attorney's/mediator's fees, court costs, and financial sanctions to the prevailing parent.

5.2 Unless an emergency exists, the parties shall use the designated mediation process to resolve disputes relating to the implementation of the Plan, except those disputes relating to financial support and other financial obligations as set forth in this Plan. Matters relating to financial support and other financial obligations as set forth in this Plan shall be brought directly to the Court.

6. Cincinnati Country Club

6.1 Since both parents presently actively use the athletic and clubhouse facilities availed through one Cincinnati Country Club Regular Membership, such membership which is titled in Father's name, and such membership which is currently in dispute in the Property Settlement in this Divorce Action, it is nevertheless acknowledged and accepted that (a) only one parent may ultimately keep this one membership following the entry of the anticipated Divorce Decree, and that (b) pursuant to the present rules and bylaws of The Cincinnati Country Club, either parent may be awarded such membership through the resolution of such Property Settlement, specifically due to each parent's individual and separate status' as legacies (multi-generational) of such club. Since according to the Club Manager of The Cincinnati Country Club and the bylaws, a non-member divorced parent is (a) unable to step on the property of The Cincinnati Country Club or (b) to serve in the capacity of a non-related baby-sitter, it would be in the best interests of the children to have both parents as separate members; as such, each parent's need and desire to be a separate member is reasonable in order to fulfill his or her respective parenting responsibilities and such need(s) and desire(s) shall forever not be deemed a luxury or personal amenity for either parent for any and all purposes.

6.2 Simultaneous with the filing of the Entry ordering this Plan, ("Entry Filing Date"), Father and Mother shall deliver their formal favorable letter of recommendation for membership for the other parent to such other parent, to be used in the event that such parent reapply for separate membership in The Cincinnati Country Club; such letter(s) shall be typed and shall be addressed to: The Board of Governors of

The Cincinnati Country Club, 2438 Grandin Rd., Cincinnati, OH 45208. Father and Mother shall not take any action or inaction either directly or indirectly and or through their families and or friends to discredit and or discourage acceptance of the other parent's application(s) for membership in such club; such application(s) may be submitted to such club at any time in the future.

7. Religion

7.1 Father and Mother shall both raise the minor children in any religious denomination(s) that each separately deem appropriate for the children's religious upbringing. The raising of the minor children in one faith in Mother's household shall not prevent the children from being raised in a different faith in Father's household, regardless of the actual similarities and or differences between such faiths. The children presently attend Mother's Hyde Park Community United Methodist Church and Father's Church of the Redeemer in Hyde Park.

8. Child Support

8.1 Basic Child Support: In accordance with the Father's current income, Father (Obligor) whose Social Security Number is 293-56-1656 and whose date of birth is October 9, 1954, shall pay to Mother, whose Social Security Number is 270-52-9846 and whose date of birth is July 21, 1956, as and for basic child support for the minor children, the sum as ordered by the Court of Common Pleas, Division of Domestic Relations, Hamilton County, Ohio, plus the then current poundage, through the Hamilton County Child Support Enforcement Agency commencing with the month following the Entry Filing Date. Said basic child support shall be payable by means of an appropriate Child Support Deduction Order in the appropriate total amount, which shall include the

current poundage of two percent (2%), subject to the continuing jurisdiction of the Court, to be revised according to the circumstances of the parties. The matter of child support can be reviewed by application of either party showing a change of circumstances. A Child Support Worksheet shall be attached hereto when the level of child support has been determined. Arrearage shall be preserved.

8.2 All child support and spousal support, if any, by this order shall be withheld or deducted from the wages or assets of the obligor under the order in accordance with Section 3113.21 of the Revised Code and shall be forwarded to the obligee under the order in accordance with Sections 3113.21 to 3113.214 of the Revised Code. The specific withholding or deduction requirements or other appropriate requirements to be used to collect the support shall be set forth in and determined by reference to the notices that are mailed by the court or by Hamilton County Child Support Enforcement Agency in accordance with Divisions (A)(2) and (D) of Section 3113.21 of the Revised Code or that court orders that are issued and sent out, determined in accordance with Division (D)(6), (D)(7), or (H) of Section 3113.21 of the Revised Code, and shall be determined without the need for any amendment to the support order. Those notices and court orders, plus the notices provided by the court or agency that require the person who is required to pay support to notify the Hamilton County Child Support Enforcement Agency of any changes in their employment status or of any other change in the status of their assets, are final and are enforceable by the court. No Federal or State Aid is involved and, if there is Federal or State aid involved, this entry shall not operate as a bar to any government agency collecting funds due.

8.3 Any payments by Father not paid through the Hamilton County Child Support Enforcement Agency (C.S.E.A.) shall be considered gifts. A Support Deduction Order shall issue with the final Shared Parenting Decree. Personal payments to the C.S.E.A. shall also be made by the obligor at any time Father's employer fails to withhold the Basic Child Support for whatever reason. The monthly Basic Child Support applicable to and payable for each minor child shall continue until that child attains the age of eighteen years or until that child permanently ceases to be enrolled in Secondary School on a full-time basis whichever is later, or that minor child is earlier emancipated or dies. Voluntary payments made by Father over and above the aforesaid child support shall not be considered a credit or offset against Father's obligation of child support.

8.4 On or before July 1 of each year, unless otherwise agreed in writing by Father and Mother, Father and Mother shall provide the other parent complete and exact copies of any and all federal, local and state tax forms, filings/returns, whether or not joint, personal, custodial, S-corporation, limited liability entities, trust(s), partnership(s), family limited partnership(s), corporation(s) and/or other types of filings, and any and all schedules, worksheets, K-1s, 1099s, W-2s, etc. regardless of whether such filings are made by any and all third parties and/or entities and/or parent.

8.4.1 Furthermore, upon the written request of either Father or Mother, the other parent shall provide such requesting parent any additional evidence of changes in financial positions including, but not limited to (a) any and all information related to

inheritances, and (b) any and all information relating to trust(s)/distributions/interests/expectancies/remainders within sixty days of receipt of such written request(s), provided that such requests are submitted no more frequently than annually; both parties shall timely and fully cooperate with one another in any party's efforts to prove a change of circumstance(s) of either parent, in order that the costs for formal discovery may be minimized.

8.5 The level of child support shall be adjusted, if necessary, according to any revised Child Support Worksheet adopted by the Court of Domestic Relations, Hamilton County, Ohio, without a showing of a change in circumstances.

9. Educational Expenses

9.1 Father and Mother shall fully cooperate with one another and with the children with research, planning, financial restructuring, and the timely completion and submission of necessary financial aid/scholarship forms and permissions as may be needed for admission, financial aid, and or matriculation of each child at the educational institution(s) of choice including, but not limited to secondary school, college and post-graduate institutions.

9.2 Mother shall be designated as the residential parent for the purpose of determining any and all schools either child may attend and for public assistance purposes unless Mother specifically agrees from time to time otherwise in a formal writing, signed by Mother which is duly witnessed and notarized. Mother shall discuss educational issues with Father in an attempt to reach agreement, but Mother shall always be the sole and ultimate decision maker over any and all children's educational issues, including, but not limited to, the selection of schools

including out-of-town schools. The children currently attend the Summit Country Day School, Hyde Park, Cincinnati, Ohio.

9.2.1 Pursuant to O.R.C. 3109.04(K) (7), the parties are notified that "A designation in the order of a parent as the residential parent for the purpose of determining the school the child attends, as the custodial parent for purposes of claiming the child as a dependent pursuant to Section 152(e) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 1, as amended, or as the residential parent for purposes of receiving public assistance to division (A) (2) of this Section, does not affect the designation pursuant to Division (K) (6) of this Section of each parent as the "Residential Parent," the "Residential Parent and Legal Custodian," or the "Custodial Parent" of the child.

10. Tax & Financial Matters

10.1 Husband shall be entitled to claim the two children as Husband's dependents strictly for purposes of exercising the Dependency Exemption for the 1997 tax year and any and all future federal, state and local income tax purposes, provided that each and every year that Husband exercises such exemption(s), prior to the children reaching the age of majority or post-majority, Husband shall pay to Wife the same amount that Wife would have saved on her taxes, in the event that Wife claimed two children as Wife's dependents for the purposes of exercising such Dependency Exemption(s); in the event that Husband's income and/or remarried income for tax purposes would exceed the maximum allowed in which one was able to profitably take such dependency exemptions, in any given year, such dependency exemption would be declared by Wife for such year and Husband shall execute any

required IRS forms to entitle her to take such exemptions.

10.1.1 Any such funds transferred from Husband to Wife hereunder shall be regarded as a transfer of property and as such shall not be declared as income to Wife and shall not be tax deductible by Husband, except in the event and only in the event that the IRS would mandate that such agreed property transfer be declared as alimony income by Wife and mandate then that such agreed property transfer be declared as an alimony deduction by Husband; the present IRS regulations require property transfers related to divorces to be completed within 60 months after entry of such decree or other date certain, after which such property transfers are deemed as alimony payments/income. As such, in the event that after such five years of properly declaring such property transfers, the IRS would demand such alimony declarations, the deductibility of such amount by Husband as well as the need to declare such amount as income by the Wife would each be fully taken into consideration when calculating the amount of money which the Husband should pay to Wife in order to make Wife whole again, after Husband's use of the dependency exemption. It is Husband's intent herein that Husband shall pay to Wife an additional amount equal to the amount in taxes required to be paid by Wife and that Husband's calculation as to the net benefit that the taking of such dependency exemptions shall return to Husband shall properly include the deductibility of such mandated "alimony payment" in order that the net financial effect on both parties is property [sic] calculated. In the event that the parties cannot agree, this matter shall be

resolved by this Court on the filing of proper motion.

10.1.2 After one child is no longer eligible to be declared as a dependent for tax filing purposes, the parties shall continue using the one dependency exemption in the same manner as set forth above for the use of two dependency exemptions, until such time that neither child is eligible to be declared as a dependent.

10.1.3 One time per year in order to properly effect the above annual property transfer, relating to the taking of dependency exemptions, the parties shall exchange preliminary and final tax filings, without restrictions or limitations whatsoever, in order to verify and continue ongoing full financial disclosure with each other and to arrive at an appropriate value for the annual property transfer.

10.2 In the event that a Child Tax Credit is enacted, Wife shall be entitled to use such credit in the event that only one parent may use such credit. Each party may be entitled to take the Medical Expense Deduction(s) when feasible, for all present and future federal, state and local income tax purposes. The parties shall fully and equitably co-operate with one another in the event that only one party can effectively utilize any and all present and/or future deductions/credits in any certain tax year(s). Husband's independent consulting business provides Husband with opportunities for tax deductions and Wife has saved money each tax year through her use of Dependency Exemptions and/or other such deductions/credits.

11. Health Insurance and Health Care Provisions

11.1 So long as each or any child respectively is a student in a montessori, primary, middle, secondary, high school, boarding school or is student teaching or is enrolled as a full time student in any college, university and/or vocational school(s), and so long as the Plan provides for coverage for the child or children, the Father shall at his sole expense continue to cause such child to be financially covered ("coverage(s)") under the group hospitalization and medical insurance policy (hereinafter referred to as Health Insurance Plan"), in accordance with the terms of such Health Insurance Plan, which Health Insurance Plan the Father shall maintain for his own benefit and/or which is provided to the Father through his employer(s), whether self or otherwise employed. The attached Child Support Order shall appropriately reflect such cost to Father.

11.2 As required by statute, a separate Health Care order consistent with these terms shall be issued with the Final Shared Parenting Decree.

11.3 In the event that Father may voluntarily alter such existing children's health insurance coverage, or voluntarily change to a new health insurance plan which does not provide comparable coverage(s), Father agrees to pay for the increased amount or differential due in uninsured health expenses which results from such change(s) in plan(s), and/or agrees to seek out additional and/or alternative coverage, at his sole expense, in order to supplement such inadequate coverage in order for it to reach, at minimum, comparable coverage(s) as set forth in this Section 11.

11.4 To the extent that there are any uninsured health expenses which are incurred by or for the benefit of each such child covered by the aforesaid

health insurance plan or plans, those uninsured health expenses shall be paid as ordered by the Court of Common Pleas, Division of Domestic Relations, Hamilton County, Ohio. Should any funds be available from trusts for the benefit of the children for purposes of payment of these expenses, each will attempt to obtain these funds and use the funds for this purpose.

11.5 Except in the case of routine visits and emergencies, all major decisions regarding the children's medical, dental, orthodontic, optical, psychological, psychiatric, pharmaceutical drugs and hospital or physical care, attention or treatment shall be jointly made by the parties following consultation between them and in collaboration with the health care provider. In the event the parties are unable to agree, Mother shall determine the need for said care, attention and/or treatment. Father will be entitled to a second opinion at his expense. Mother and Father shall continue to employ or to use family doctors whenever feasible, including Dr. Frederick D. Haffner (pediatrician), Dr. Samuel P. Todd, Jr. (orthopedics), Dr. Stuart Anness (eye doctor), Dr. Thomas Todd (General Practioner), Dr. Michael Todd (General Practioner), Dr. David Lange (Orthodontics), Dr. William Lange (Orthodontics). The children's primary physician will be one participating in Father's Health Insurance Plan(s). Father and Mother shall jointly select the children's primary physician. The children may continue to employ and to attend appointments with all of their present physicians, speech therapists, dentists, eye doctors, etc.

11.6 Mother shall attempt to have Uninsured Health Expenses and Father's other obligations as set forth in this Plan, billed directly to Father from any provider of such goods and services; in the

event however, that payment for such services is demanded or expedited without employing such a direct billing methodology, when Mother shall submit copies of any and all such receipts and/or invoices directly to Father in order to be appropriately reimbursed by Father for Father's contribution to such Uninsured Health Expenses and/or other Father's obligations, as set forth in this Plan.

11.7 If available to Father through his employer, Father shall continue to maintain long-term Disability Insurance pursuant to the terms of the Disability Insurance Plan for the benefit of the children.

11.8 Any amounts paid pursuant to this Section 11, shall not be paid through the Child Support Enforcement Agency.

12. Life Insurance

12.1 Husband's life insurance currently includes any and all policies issued on Husband's life by New England Mutual Life Insurance Company ("NEL") and/or its successors and/or assigns including Policy #6887514 ($64,700 face amount), Policy #6887512 ($40,000 face amount plus $8,212 paid-up additions to face amount), Policy #6795632 ($60,000 face amount) for a total NEL face amount of $172,912 plus a term insurance policy of $50,000 for a total current amount of approximately $222,912.

12.2 On or about December 20, 1993, Husband voluntarily established a revocable self-administered inter vivos trust entitled The Samuel Pogue Todd III Trust to provide for the health, education and welfare of the two children in the event of Husband's death. At that time, Husband asserts that he voluntarily made such trust the sole beneficiary of Husband's NEL policies and made the two minor

children the beneficiaries of such trust and now reiterates such continued intentions.

12.3 Husband shall be obliged to continue to maintain said NEL life insurance on Husband's life which insurance shall remain unencumbered and free of liens and/or other clouds against such investment, which insurance shall deliver to Samuel Pogue Todd IV the death benefit amount of a minimum of Seventy-Five Thousand ($75,000.00) via a subtrust/account in strictly Samuel Pogue Todd IV's name in the above trust instrument, and which insurance shall deliver to Garrison Bardes Todd the death benefit amount of a minimum of Seventy-Five Thousand ($75,000.00) via a subtrust/account in strictly Garrison Bardes Todd's name in the above trust instrument, such dollar amounts to be calculated as of the original date of distribution of such insurance settlement funds from such insurance company(ies) to such subtrust(s) or as otherwise agreed by the parties.

12.4 In the event of Husband's death, the trustees of the Samuel Pogue Todd III Trust shall administer such trust in good faith to inure to the benefit of each of the two children and in accordance with the terms and conditions of such trust and shall pay obligations and expenses of either child upon request by either child and/or by Wife, as sole guardian of the children, in the event that such children are still minors; in the event that any disputes arise with regard to such discretionary or mandatory disbursements from such trust, Wife reserves any and all rights to have such matters resolved by any Court with proper jurisdiction over this matter and hereby sets forth this Court's continuing jurisdiction over this matter.

12.5 Periodically, upon Wife's request made not more frequently than annually, Husband shall provide Wife with written evidence that policies of life insurance required pursuant to this Section are (a) being maintained; (b) comply with the beneficiary and all other designation(s) and purpose(s) as herein required; and (c) that any premiums and fees have been timely paid.

12.6 Husband shall from time to time be entitled to substitute policies of life insurance maintained on his life which are payable to the Samuel Pogue Todd III Trust so long as the Trust is always maintained to pay the minimum death benefits to each child as set forth above and to meet other conditions as set forth above. Any and all of each "substitute" insurance shall be issued from a top quality company/product line which carries the highest quality rating in the insurance industry, as rated by one of the premier rating services in the event that such insurance would be altered from Husband's present policies as set forth in this Section.

13. Required Notices

13.1 Pursuant to Ohio Revised Code 3109.051 (H) and 3319.321(b)(5)(a), the parties hereto are notified as follows: Excepting as specifically modified or otherwise limited by the Parties' Shared Parenting Plan, and subject to Ohio Revised Code 2301.35(G)(2) and 3319.321(F), both parents are entitled to access, under the same terms and conditions, to any records that are related to a child and to which a parent of the child legally is provided access, including but not limited to school records and records of any trust under which a child is or may be a beneficiary or may have an interest. Any keeper of a record, public or private, who knowingly fails to comply with this order, is in contempt of court.

13.2 Pursuant to Ohio Revised Code 3109.051(J), the parties hereto are hereby notified as follows: Excepting as specifically modified or otherwise limited by the parties' Shared Parenting Plan, as subject to ORC 3319.321, both parents are entitled to access, under the same terms and conditions as the other parent, to any student activities that are related to the child and to which the other parent of the child legally is provided access.

13.3 Both parents shall be entitled to have reasonable access to any day care center and or day care provider that is or that in the future may be entrusted with the care of the children.

13.4 Mother or Father shall keep Father or Mother informed of the names, addresses and telephone numbers of all professionals, schools, religious or other institutions with which either child is associated or by whom either child is being treated, and Mother or Father shall always provide the Father's or Mother's name, address, and telephone number as the child's Father or as the child's Mother to all professionals, schools, religious and other institutions, so that any written records relating to either child shall contain each parents' names, addresses and telephone numbers as parents. Instructions shall be given by Mother or Father so that both parents shall receive all notices and both parents shall have complete access to all such records for such minor children. Each parent shall have access to all medical records maintained for their children, to the full extent possible without jeopardizing a child's treatment.

14. Findings of Fact

14.1 Finding of Fact and Conclusions of law pursuant to O.R.C. 3109.04, 3109.051 and 3109.052 are hereby waived, are not required, or have been

addressed elsewhere by the Court. By signature on this Plan, Father knowingly and voluntarily waives any requirement that the court issue separate findings of fact/conclusions of law pursuant to O.R.C. Sections 3109.04, 3109.051 and 3109.052.

15. Modification & Waiver

15.1 The Hamilton County, Ohio, Court of Common Pleas, Division of Domestic Relations shall retain continuing jurisdiction to modify any and all issues relating to the minor children as set forth herein, except Provision 12, Life Insurance. Jurisdiction over the issue of life insurance is limited to enforcement of said provision. This Plan is modifiable either by express written agreement of the parties, or by the Court upon its own motion or proper motion by either parent and formalization of the appropriate entry; should subsequent legislation change the terms of O.R.C. 3109.04(E)(2)(b) regarding modification, the statute in effect on the date a motion to modify is filed shall control. In no event shall any breach or default under this Plan be deemed to be a waiver of any subsequent breach of default of the same or similar nature.

16. Incorporation into Decree

16.1 This Plan, as approved and adopted by the Court herein, shall be incorporated by reference into the Shared Parenting Decree, as if rewritten in its entirety, word for word, into such Shared Parenting decree, and entered as said Order of the Court.

17. Governing Law

17.1 This Plan shall be subject to and governed by the laws of the State of Ohio, notwithstanding the fact that one or both of the parties may become a resident of a state other than the state of Ohio.

18. Miscellaneous Administrative Provisions

18.1 The captions contained in this Plan are for convenience only and are not intended to limit or define the scope or effect of any provision of this Plan.

18.2 If any term or provision of this Plan shall be deemed to be void or invalid, then only that term or provision shall be stricken from this Plan; and in all other respects, this Plan shall remain valid and binding on the parties. This Plan shall be fully binding upon the parties, their heirs, next of kin, executors and administrators, successors and assigns.

18.3 Willful non-compliance by a parent/party with this Plan may result in a finding of contempt resulting in thirty (30) days to ninety (90) days incarceration, a $250.00 to $1,000.00 fine, and an award of the moving party's attorneys' fees and costs.

18.4 Each and every Exhibit and Attachment to this Plan shall be fully incorporated by reference into this Plan, and as such shall forever be construed as being part and parcel of this Plan the same as if each and every phrase on such Exhibits and Attachments was rewritten word for word in its entirety in this Plan.

18.5 In the event that Mother (and/or any of Mother's family members) should directly or indirectly advance Father funds to meet Father's obligations and contributions, if any, as set forth in this Plan, Mother retains the right to seek reimbursement of such funds from Father. Father shall repay to Mother all of such amounts due within thirty days of receiving reasonable notice from Mother, unless negotiated otherwise in writing between the parties; in the event that Father does not timely repay Mother, Mother shall be entitled to charge Father

and to collect from him a reasonable annual interest rate on such money owed to her, until such amounts owed have been paid in full. Should Father never pay such debt(s), Mother shall be entitled to (a) declare that such debt(s) is worthless; and (b) deduct such bad debt from her income taxes, in the event that such accounting is in accordance with the then current IRS practices (including Revenue Ruling 93-27, and Sections 166, 1012, 1011 of the tax code); and (c) effect legal recourse against Father to collect such debts just as if such debts were owed to Mother as if transacted in any arms-length transaction.

18.5.1 In the event that Father (and/or any of Father's family members) should directly or indirectly advance Mother funds to meet Mother's obligations and contributions, if any, as set forth in this Plan, Father retains the right to seek reimbursement of such funds from Mother. Mother shall repay to Father all of such amounts due within thirty days of receiving reasonable notice from Father, unless negotiated otherwise in writing between the parties; in the event that Mother does not timely repay Father, Father shall be entitled to charge Mother and to collect from her a reasonable annual interest rate on such money owed to him, until such amounts owed have been paid in full. Should Mother never pay such debt(s), Father shall be entitled to (a) declare that such debt(s) is worthless; and (b) deduct such bad debt from his income taxes, in the event that such accounting is in accordance with the then current IRS practices (including Revenue Ruling 93-27, and Sections 166, 1012, 1011 of the tax code); and (c) effect legal recourse against Mother to collect such debts just as if such debts were owed to Father as if transacted in any arms-length transaction.

18.6 Costs of any activities of the children shall be paid by the parties as ordered by the Court of Common Pleas, Division of Domestic Relations, Hamilton County, Ohio.

19. Submission of Plan

19.1 Father has been represented at all times by counsel, Phyllis Bossin, Michael Kaufman, Ruth Jackson and/or William S. Abernethy, Jr. Mother, who is not an attorney, is presently Plaintiff/Pro-Se. Over the past three years, Mother has retained various counsel including Edward Felson, Martin Jennings, Claudia Schaefer, John Heilbrun and James Chalfie. Both parties also participated in mediation with Bea Larson, in a full parenting investigation with Leslie Duncan, MSSW and early dissolution negotiations with Sally Waterman.

19.1 This Plan is being submitted as Father's Second Amended Proposed Shared Parenting Plan, and is submitted to the Court on this 16 day of September, 1999.

/s/ Samuel Pogue Todd III
Father, Samuel Pogue Todd III

STATE OF OHIO)
) SS:
HAMILTON COUNTY)

BE IT REMEMBERED that on this 16th day of September, 1999, before me, the subscriber, a notary public in and for said county and state, personally appeared Samuel Pogue Todd III and acknowledged the signing of the foregoing agreement to be his free and voluntary act and deed, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year aforesaid.

/s/ William S. Abernethy, Jr.
Notary Public
WILLIAM S. ABERNETHY, JR.
attorney at Law
Notary Public State of Ohio
My commission has no expiration
date. Section 147.03 O.R.C.

Respectfully Submitted,

/s/ William S. Abernethy, Jr.
William S. Abernethy, Jr. 0002137
Counsel for Defendant
Strauss & Troy
The Federal Reserve Building
150 East Fourth Street
Cincinnati, OH 45202-4018
513/629-9420

EXHIBIT D (T.d. 342)

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES	:	Case No. DR9402798
Plaintiff	:	File No. E-194749
-vs-	:	Judge Cunningham
SAMUEL P. TODD III	:	**ENTRY ADOPTING FATHER'S PROPOSED SECOND AMENDED SHARED PARENTING PLAN**
Defendant	:	

(ENTERED SEP. 22, 1999, T.d. 318)

The above captioned matter came before the Court pursuant to Father's filing of his second amended shared parenting plan. The Court finds that Father's second amended shared parenting plan, filed on September 16, 1999, includes the changes requested by the Court in its entry of September 1, 1999. Therefore, the Court hereby adopts as its parenting order Father's Proposed Second Amended Shared Parenting Plan filed on September 16, 1999.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

Worksheet
Hamilton County Domestic Relations Court
Child Support Computation
Sole Residential Parent or Shared Parenting Order

Name of Parties: BARDES/TODD
Case No. A /DR DR9402798

Mother has _____ pay periods/yr
Father has 12 pay periods/yr

Number of minor children : 2

	COLUMN I FATHER	COLUMN II MOTHER	COLUMN III COMBINED
1.a Annual gross income from employment OR, when determined appropriate by the court or agency, average annual gross income from employment over a reasonable period of years (exclude overtime and bonuses)	$50,000	$10,920	
1.b Amount of overtime and bonuses:			
FATHER: YR 3 $ / MOTHER: YR 3 $	$0	$0	
YR 2 $ / YR 2 $	$0	$0	
YR 1 $ / YR 1 $	$0	$0	
AVERAGE	$0	$0	
Lesser of 3 year average or year 1 (Include in Column I and/or Column II the average of the three years or the year 1 amount, whichever is less, IF THERE EXISTS A REASONABLE EXPECTATION THAT THE TOTAL EARNINGS FROM OVERTIME AND/OR BONUSES DURING THE CURRENT CALENDAR YEAR WILL MEET OR EXCEED THE AMOUNT THAT IS THE LOWER OF THE AVERAGE OF THE THREE YEARS OR THE YEAR 1 AMOUNT. IF, HOWEVER, THERE EXISTS A REASONABLE EXPECTATION THAT THE TOTAL EARNINGS FROM OVERTIME/BONUSES DURING THE CURRENT CALENDAR YEAR WILL BE LESS THAN THE LOWER OF THE AVERAGE OF THE THREE YEARS OR THE YEAR 1 AMOUNT, INCLUDE ONLY THE AMOUNT REASONABLY EXPECTED TO BE EARNED THIS YEAR.)	$50,000	$10,920	
2 Annual income from interest and dividends (whether or not taxable)	$1,926	$11,129	
3 Annual income from unemployment compensation	$0	$0	
4 Annual income from workers' compensation or disability insurance	$0	$0	
5 Other annual income (identify)	$23,791	$0	
6 Total annual gross income (add lines 1-5)	$75,717	$22,049	
7. Annual court-ordered support paid for other children	$0	$0	
8 Adjustment for minor children born to either parent and another parent, which children are living with this parent (number of children times federal income tax exemption less child support received for the year, not to exceed the federal tax exemption)	$0	$0	
9 Annual court-ordered spousal support paid to a former spouse	$0	$0	
10 Amount of local income taxes actually paid or estimated to be	$1,550	$0	
11 For self-employed individuals, deduct 5.6% of adjusted gross income or the actual marginal difference between the actual rate paid by the self-employed individual and the F.I.C.A. rate	$0	$0	
12 For self-employed individuals, deduct ordinary and necessary business expenses	$0	$0	
13 Total gross income adjustments (add lines 7-12)	$1,550	$0	
14 Adjusted annual gross income (subtract line 13 from 6)	$74,167	$22,049	
15 Combined annual income that is basis for child support order (add line 14, Col. I and Col. II)			$96,216
16 Percentage of parent's income to total income:			
a. Father (divide line 14, Col. I by line 15, Col. III)	77.08%		
b. Mother (divide line 14, Col. II by line 15, Col. III)		22.92%	= 100%

	COLUMN I FATHER	COLUMN II MOTHER	COLUMN III COMBINED
17 Basic combined child support obligation (Refer to basic child support schedule in division (D) of section 3113.215 of the Revised Code; in the first column of the schedule, locate the sum that is nearest to the combined annual income listed in line 15, Col. III of this worksheet, then refer to the column of the schedule that corresponds to the number of children in this family. If the income of the parents is more than one sum and less than another sum in the first column of the schedule, you may calculate the basic combined child support obligation based upon the obligation for those two sums.)			# 16,082
18 Annual child care expenses that are work, employment training, or education related, as approved by the court or agency (deduct the tax credit from annual cost, whether or not claimed)	$575	$0	
19 Marginal, out-of-pocket costs, necessary to provide for health insurance for the children who are the subject of this order	$1,301	$0	
20 Total child care and medical expenses (Add lines 18 and 19, Col. I and II)	$1,761	$0	
21 Combined annual child support obligation for this family (Add lines 17 and 20, Col. I and II)			$17,843
22 Annual support obligation/parent: a. Father (multiply line 21, Col. III, by line 16a)	$13,754		
b. Mother (multiply line 21, Col. III, by line 16b)		$4,089	
23 Adjustment for actual expenses paid for annual child care expenses and marginal, out-of-pocket costs, necessary to provide for health insurance (enter number from line 18 or 19 if applicable)	$1,761	$0	
24 Actual annual obligation (Subtract line 23 from Line 22a or 22b	$11,993	$4,089	
25 Gross household income per party after exchange of child support (add lines 14 and 24, Col. I or II for residential parent or, in the case of shared parenting order, the parent to whom child support will be paid; subtract line 24 Col. I or II from line 14 for parent who is not the residential parent or, in the case of shared parenting order, the parent who will pay child support)	$62,174	$34,042	
26 Comments, rebuttal, or adjustments to correct figures in lines 24, Col. I and 24, Col. II if they would be unjust or inappropriate and would not be in best interest of the child or children (specific facts to support adjustments must be included). See Court's decision on objections, page 7.	$15,000	-	
27 Final figure (this amount reflects final annual child support obligation)	Father	is	Obligor $15,000
28 For Decree: child support per month per child (divide obligor's annual share, line 27, by 12 and by number of children)			$625.00
29 For deduction order: child support per pay period (calculate support per pay period from figure on line 28) plus appropriate processing charge			$1275.00

Calculations have been reviewed.
Signatures:

_____
Father - (I do/do not consent)
Sworn to before me and subscribed in my presence this ____day of _____, 19_____

_____
Notary Public

_____
Mother - (I do/do not consent)
Sworn to before me and subscribed in my presence this ____day of _____, 19_____

_____
Notary Public

_____
Attorney for Father

_____
Attorney for Mother

T.d. 342 (QMCSO)

[Caption On Qualified Medical Child Support Order]

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

Name Dee Ellen Garrison Bardes

S.S. # 270-52-9846

DOB 7/21/56

Plaintiff/~~Petitioner~~
Obligee/~~Obligor~~

-vs-

Name Samuel P. Todd, III

S.S. # 293-56-1656

DOB 10/9/54

~~Plaintiff/Petitioner~~ Defendant
~~Obligee~~/Obligor

ENTER

ENTER /s/ Cunningham, Jr.
Judge Cunningham

Issue Date

Case No. A/DR DR9402798

File No. E – 194749-0-7

CSEA No. AA89964/01

Judge Cunningham

Magistrate Murphy

QUALIFIED MEDICAL CHILD SUPPORT ORDER
(O.R.C. 3113.217)

HEALTH INSURANCE PLAN:
Aetna US Health Care

PARTICIPANT 1:
Obligor/~~Obligee~~

NAME: Samuel P. Todd, III
Address: 670 Reisling Knoll
City: Cincinnati State: OH Zip: 45226

PARTICIPANT 1:

EMPLOYER: Ross Sinclaire & Associates
Address: 36 E. 7th St. Suite 1550
City: Cincinnati State: OH Zip: 45202

HEALTH INSURANCE PLAN: (If applicable) _____

PARTICIPANT 2:
EMPLOYER: _____
Address: _____
City: _____ State: _____ Zip: _____

ALTERNATE
RECIPIENT(S):
(Child/ren)

Name(s): Samuel P. Todd, IV (DOB: 2/19/90) and Garrison Bardes Todd
and DOB (DOB: 9/26/91)
Address: 1035 Paxton Avenue
City: Cincinnati State: OH Zip: 45208

WHEREAS, the Court finds that health insurance coverage for the child(ren) named as Alternate Recipient(s) is available to the Participant at a reasonable cost and that the Participant has been ordered to secure/maintain health insurance coverage for the child(ren).

IT IS HEREBY ORDERED THAT:

1. The following group health insurance and health care policies, contracts and plans are available at a reasonable cost to the Participants (include name of insurer that issues each policy, contract or plan): Aetna US HealthCare Group 454244-10-000

COPIES TO: _____ Clerk of Courts _____ File _____ CSEA _____ Participant (1) Employer _____ Participant (2) Employer _____ Participant (1) _____ Participant (2)

2. Participant shall provide the insurer, within thirty (30) days from the date of this order, with a copy of this Order and promptly shall complete the necessary enrollment forms or other documents necessary to designate the Alternate Recipient(s) listed above as dependents eligible for coverage by the Health Insurance Plan identified above in the form and to the same extent coverage is available to the Participant and other dependents of the Participant in the Health Insurance Plan. Participant shall also within thirty (30) days of the issuance of this order, furnish written proof to the Hamilton County Child Support Enforcement Agency that the coverage has been obtained, that the insurer has been provided with a copy of this order, and that the other party has been provided with all documents/information as set forth in paragraph 3 below.

3. Participant shall supply the other party with (a) insurance forms necessary to receive payment. Reimbursement or other benefits; (b) necessary insurance cards; and (c) information regarding the benefits, limitations

and exclusions of the coverage of the Health Insurance Plan or any successor plan.

4. Obligor/Obligee shall be responsible for the first $100.00 per calendar year, per child for all uninsured medical, dental, hospital, prescription, optical, psychological, psychiatric and orthodontic expenses, including co-payments and deductibles (designated "ordinary"). **The remaining uninsured expenses (designated "extraordinary"), including additional co-payments and/or deductibles under the Health Insurance Plan for the Alternate Recipient(s), shall be shared by the parties as follows: Obligor – 50% and Obligee – 50%** or other agreement or order: _____

5. Any reimbursements for out-of-pocket medical, optical, hospital, dental, prescription or other reimbursable expenses covered under the Health Insurance Plan or any successor plan and paid for on behalf of the Alternate Recipient(s) insured child(ren) shall be made directly to: Obligor/Obligee: Name _____

Address _____

The insurer may continue to make payments for medical, optical, hospital, dental or prescription services directly to any health care provider in accordance with the Health Insurance Plan.

6. Participant shall be responsible for any premiums charged by the insurer for coverage of the Alternate Recipient(s) under the Health Insurance Plan.

7. Participant shall be entitled to secure a second opinion at his/her own expense for psychological, psychiatric and orthodontic treatment of a non-emergency nature.

8. Pursuant to O.R.C. 3113.217(E), this order is binding upon the Obligor and Obligee, their employers, and any insurer that provides health insurance for them or their child(ren).

9. If Participant fails to provide health insurance coverage for the child(ren) within thirty (30) days as ordered or otherwise to comply within thirty (30) days with any other provision of this Order, the CSEA shall notify the Court in writing of the failure to comply and the Court shall issue an order to the employer to take whatever action is necessary to make application to enroll Participant in any available group health insurance policy or health care policy with coverage for the child(ren) who are subject of the child support order, to submit a copy of this Order for health insurance coverage to the insurer at the time that the employer makes application to enroll the child(ren) in the health insurance or health care policy contract or plan, and if the application is accepted, to deduct any additional amount from earnings necessary to pay the additional cost for that health insurance coverage.

10. Any insurer who receives a copy of an order issued under O.R.C. 3113.217 shall comply with that section, and any order issued under that section, regardless of the residence of the child(ren).

11. During the time that this Order is in effect, the employer who is the subject of the Order upon written

request shall release to the other party and the CSEA all information about the health insurance coverage of the Participant, including, but not limited to, the name and address of the insurer and any policy, plan, or contract number.

12. During the time that this Order is in effect, the employer shall notify the CSEA of any change in and/or the termination of the coverage under the Health Insurance Plan.

13. The parties shall notify the Plan Administrator of any change of address of the Participant, Alternate Recipient(s), or the person designated to receive reimbursements as well as any change in status of any Alternate Recipient.

14. It is the intention of the parties that this Order continue to qualify as a Qualified Medical Child Support Order under ERISA Section 609, as it may be amended from time to time, and that the Plan Administrator shall reserve the right to reconfirm the qualified status of the Order as benefits become payable hereunder.

15. This Order shall not be construed so as to require the Health Insurance Plan to provide any type or form of benefit, or any option, which otherwise would not be provided to a dependent under the Plan.

16. This Order shall remain in effect until the earliest of: (a) the date that Participant loses his/her employer-sponsored health coverage as a result of his/her termination of employment, retirement, or death/ or (b) the date that the Alternate Recipient reaches the age

of eighteen (18) years and no longer attends any recognized and accredited high school on a full-time basis; or (c) the date that the employer no longer offers dependent health care coverage to any of its employees under the Health Insurance Plan or any successor plan.

COPIES TO: _____ Clerk of Courts _____ File _____
CSEA _____ Participant (1) Employer
_____ Participant (2) Employer _____
Participant (1) _____ Participant (2)

NOTIFICATION

TO THE OBLIGOR/OBLIGEE:

Pursuant to O.R.C. Sec. 3113.217, Obligor is required to maintain health care coverage for the minor child(ren) at a reasonable cost through a group health insurance or health care policy, contract or plan offered by his/her employer or through any other available source. It is important for the well-being of your child(ren) that the best (and reasonable) health care coverage be maintained.

Complete this document as appropriate immediately after the occurrence of any of the events listed and mail the original of this document to the office and address listed below.

TO: Hamilton County Child Support Enforcement Agency
800 Broadway
Cincinnati, Ohio 45202-1332

[X] 1. My employer (or new employer) now offers health care coverage for the minor child(ren) effective _____, 19__.

Employer's Name and address is: Ross Sinclaire & Associates 36 E. 7th Street, Suite 1550, Cincinnati, OH 45202

Insurer's name, address, policy number, employee cost to cover child(ren) is: _____

Aetna US Health Care

Group No. 454244--10-000

[ ] 2. I now have health care coverage available to the child(ren) from another source. State source, address, insurer, insurer's address, policy number and cost to cover child(ren).

_____

_____

_____

Date 12-2-99

Case No. A/DR DR9402798

File No. E– 194749-0-7

CSEA # AA89964/01

X /s/ Samuel P. Todd III
Obligor's Signature Samuel P. Todd III

670 Reisling Knoll
Address

City Cincinnati State OH Zip 45226

[ ] Check here if new address

Daytime Phone No. 608-4964

_____
Obligee's Signature Dee Ellen Garrison Bardes

1035 Paxton Avenue
Address

City Cincinnati State OH Zip 45208

[ ] Check here if new address

Daytime Phone No. _ _____

HAVE SEEN AND APPROVED:

_____

Plaintiff/Petitioner/Obligor/Obligee
Dee Ellen Garrison Bardes
Plaintiff Pro Se

_____

Attorney for Plaintiff/Petitioner

_____

Accepted by Plan Committee or Administrator

X /s/ Samuel P. Todd III
Defendant/~~Petitioner~~/Obligor/~~Obligee~~
Samuel P. Todd III

/s/ William S. Abernethy, Jr.
Attorney for Defendant/~~Petitioner~~
William S. Abernethy, Jr.

12/2/99
Date

INSTRUCTIONS TO THE CLERK: You are directed to mail a copy of this Order to the employer and to the Obligor and Obligee by Ordinary Mail, with proof of mailing, unless they have acknowledged receipt by signature above.

ATTENTION – COPY INSTRUCTIONS:

You are responsible for the appropriate number of copies: For one participant you need 1 original plus 4 copies; for

two participants you need 1 original plus 6 copies. Required number of copies to be submitted along with the original.

COPIES TO: _____ Clerk of Courts _____ File _____ CSEA _____ Participant (1) Employer _____ Participant (2) Employer _____ Participant (1) _____ Participant (2)

T.d. 341

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES SS #: 270-52-9846 DOB: 07/21/56 Plaintiff vs. SAMUEL POGUE TODD III SS #: 293-56-1656 DOB: 10/9/54 Defendant	CASE NO. DR9402798 FILE: E 194749-0-7 CSEA #AA89964/01 Judge Penelope Cunningham Magistrate William Murphy JUDGMENT ENTRY DECREE OF DIVORCE

(COSTS PAID DEC. 23, 1999)

This cause came on to be heard on the 2nd day of December, 1999, before the Honorable Penelope Cunningham, upon the Second Amended Counterclaim for Divorce heretofore filed by the Defendant. The matter proceeded to trial with the Defendant offering evidence upon his Second Amended Counterclaim. Defendant was represented by counsel in open Court throughout all hearings. Plaintiff was present at the final hearing on the merits of the Divorce.

The Court finds from the evidenced adduced [sic] that the Defendant was duly served with Summons together with a copy of the Complaint as required by law, and Plaintiff was duly served with a copy of Defendant's Second Amended Counterclaim which service is hereby

approved. The Court further finds it has exclusive jurisdiction over the cause of action and of the parties hereto.

The Court finds from the evidence adduced by the Defendant that:

The Defendant was a bona fide resident of Hamilton County and the State of Ohio for more than six (6) months immediately preceding the filing of the Second Amended Counterclaim.

1. The Plaintiff and the Defendant were married in Cincinnati, Ohio on May 26, 1988 and two (2) children were born the issue of such marriage, Samuel Pogue Todd IV, born February 19, 1990 and Garrison Bardes Todd, born September 26, 1991.

2. The parties have lived separate and apart without cohabitation for a period in excess of one (1) year, and the Defendant is entitled to a divorce as prayed for in his Second Amended Counterclaim.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the marriage relationship heretofore existing between the Plaintiff and Defendant be, and the same is hereby terminated, and both parties are hereby released and discharged from all of the obligations thereof.

The matters of child support, issues involving the minor children, spousal support and related matters were referred by the Court to a Magistrate of this court who, following hearings, filed his Magistrate's Decision on August 27, 1998 to which Plaintiff objected. This Court heard arguments of counsel on the Objections of Plaintiff. Subject to the modification of said Magistrate's Decision

by the Decision on Objections dated September 1, 1999, this Court accepts the findings of the Magistrate as to the issues determined by the magistrate, adopts the Magistrate's Decision and grants judgment accordingly.

3. The parties have settled the property issues involved herein, having entered into Property Settlement Stipulations filed with this Court on May 6, 1997 and an Addendum to Property Settlement Stipulations filed herein on August 23, 1999, copies of which are attached hereto as *Exhibits A and B*. The Court hereby Orders that Exhibits A and B be incorporated herein as if fully rewritten herein. Each party is hereby ordered to comply in full with the terms of the Property Settlement Stipulations and the Addendum to Property Settlement Stipulations and to execute and deliver to the other party any and all documents necessary to fulfill the terms thereof.

4. The parties shall share the parenting of the minor children pursuant to the terms of Father's Second Amended Shared Parenting Plan filed herein on September 16, 1999, pursuant to the Decree of Shared Parenting entered of even date herewith.

5. Pursuant to the Decision and Orders of this Court entered on September 1, 1999 and docketed on September 2, 1999, effective September 1, 1998, Defendant (Father) shall pay to Plaintiff (Mother) child support in the amount of $625.00 per month per child (a total of $1,250.00 per month) payable with proper processing fee of 2% for a total of $1,275.00 per month, payable through the Division of Child Support of the Department of Human Services Agency (Agency) through a Deduction Order. The support level is more than as set forth on the

Child Support Worksheet with the deviation explained in this Court's Decision and Orders of September 1, 1999 (docketed September 2, 1999). Child Support shall continue until each child is eighteen (18) years of age. However, notwithstanding Section 3109.01 of the Revised Code, **the parental duty of support to children, including the duty of a parent to pay support pursuant to a child support order, shall continue beyond the age of majority so long as the child continuously attends on a full-time basis any recognized and accredited high school or a court-issued child support order provides that the duty of support continues beyond the age of majority**. Except in cases in which a child support order requires the duty of support to continue for any period after the child reaches age nineteen, the order shall not remain in effect after the child reaches age nineteen. That duty of support shall continue during seasonal vacations. Arrearage shall be preserved.

6. Defendant (Father) shall maintain health insurance for the parties' children. A Qualified Medical Child Support Order shall issue. This Order shall remain in effect for each minor child until that child reaches the age of eighteen (18). However, notwithstanding Section 3109.01 of the Revised Code, the duty of Father to maintain the health insurance for the children shall continue beyond the age of majority as long as the child continuously attends on a full-time basis any recognized and accredited high school or a court-issued medical child support order provides that the duty of maintaining health insurance continues beyond the age of majority. Except in cases in which a medical child support order requires the duty of health insurance to continue for any

period after the child reaches age nineteen, the order shall not remain in effect after the child reaches age nineteen. Mother shall pay the first $100.00 per calendar year per child for all uninsured medical, dental, hospital, prescription, optical, psychological, psychiatric and orthodontic expenses. The remaining costs of these uninsured costs shall be shared equally between the parties.

7. Until further order of the Court, Husband shall not be required to contribute to the cost of private elementary, or secondary education of the parties' children.

8. The cost of the parties' children's extracurricular activities shall be divided equally between the parties for those activities in which the parties agree that the children should participate. If the parties disagree on the children participating in an activity, either parent may enroll the children in that activity, but the parent enrolling the children in the activity shall be responsible for 100% of the cost of that activity.

9. The Court further Orders that all other issues involving the children have been resolved either in the Father's Second Amended Shared Parenting Plan and Entry Adopting that Plan and the Decision and Orders of the Court entered September 1, 1999 and docketed on September 2, 1999, and all Stipulations, Agreements, Entries or Orders entered herein, and the parties are hereby ordered to comply with those provisions.

10. The Court further orders that all property and related issues have been resolved either in the Property Settlement Stipulations (Exhibit A) the Addendum to Property Settlement Stipulations (Exhibit B), the Decision and Orders of this Court entered on September 1, 1999

(docketed September 2, 1999) and all Stipulations, Agreements, Entries or Orders entered herein and the parties are hereby ordered to comply with all terms thereof, specifically including, but not limited to, the Stipulations attached hereto as Exhibit "C".

11. All stipulations, agreements, entries and orders previously entered herein are hereby incorporated herein as if fully rewritten herein, including, but not limited to, the Court's Decision on Allocation of College Expenses entered April 30, 1999. The Court retains jurisdiction over payment of educational expenses, primary, secondary and/or college for the minor children of the parties during their minority.

12. Neither party shall pay spousal support to the other and no jurisdiction is reserved to this Court on the issue of spousal support.

13. Plaintiff shall pay any and all courts costs of this action since May 6, 1997 except that Defendant shall bear the costs associated with the filing of his Second Amended Shared Parenting Plan. Defendant shall pay a total of $1,700 in court costs and Plaintiff shall pay the balance of the court costs through the Entry of a Decree of Divorce.

14. Any Restraining Orders previously entered herein are hereby dissolved.

_____
Judge

Dee Ellen Garrison Bardes, Plaintiff Pro Se	Samuel P. Todd, III, Defendant

STRAUSS & TROY

By: /s/ William S. Abernethy
William S. Abernethy, Jr.
(0002137)
Attorney for Defendant
The Federal Reserve Building
150 East Fourth Street
Cincinnati, Ohio 45202
(513) 621-2120

EXHIBIT A (T.d. 341)

[Decree Incorporating T.d. 127 Property Settlement]

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES a/k/a D'ELLEN BARDES a/k/a D'ELLEN BARDES TODD SS#: 270529846 D.O.B.: 7/21/1956 Plaintiff	**CASE NO. DR9402798** **File: E 194749-0-7** **Judge Penelope Cunningham** **Magistrate William Murphy**
SAMUEL POGUE TODD III SS#: 293561656 D.O.B.: 10/9/1954 Defendant	**PROPERTY SETTLEMENT STIPULATIONS** (FILED MAY 6, 1997) [T.d. 127]

(ENTERED DECEMBER 30, 1999)

THESE PROPERTY SETTLEMENT STIPULATIONS made and entered into at Cincinnati, Ohio this 5th day of May, 1997 by and between Samuel Pogue Todd III (hereinafter referred to as "Husband") and Dee Ellen Garrison Bardes also known as D'Ellen Bardes, also known as D'Ellen Bardes Todd, (hereinafter referred to as "Wife") are intended to narrow the issues to be heard at the May 15, 1997 hearing through stipulating to the allocation of the parties assets and liabilities, **except for (1) any and all liabilities relating to any of the children-related issues,** including but not limited to: child support, payment for past, present and future private school education, payment for private college and professional graduate school, children's trusts interests, children's medical expenses, children's health insurance, children's activities

expenses, and except for (2) **any and all liabilities relating to any spousal support** related issues, without restrictions or limitations of any kind, except for 1994 spousal support which Wife hereby waives her rights to, and provided that such stipulations are forever ***not*** **construed** to represent a comprehensive and or final Separation Agreement of any kind, such stipulations are as follows:

WITHOUT WAIVING ANY RIGHTS OR CLAIMS TO ANY ISSUE RELATING TO THE CHILDREN EITHER PRIOR TO THE AGE OF MAJORITY AS SET FORTH BY O.R.C. 3109.01 or POST-MAJORITY, WITHOUT RESTRICTIONS OR LIMITATIONS OF ANY KIND, in accordance with O.R.C. 3109.04, 3113.215, 3103.03, 3105.21, 3109.05, and related statutes and or pending legislation, and in accordance with state and national common law, and WITHOUT WAIVING ANY RIGHTS OR CLAIMS TO SPOUSAL SUPPORT that Wife may have against Husband from any income, earnings, or assets, or facts and circumstances relating to their marriage, in accordance with O.R.C. 3105.18 and related statutes, and in accordance with state and national common law, except for 1994 spousal support which Wife hereby waives her rights to, THE PARTIES DO HEREBY AGREE TO THE FOLLOWING EQUITABLE DIVISION OF PROPERTY AS SPECIFICALLY SET FORTH HEREIN:

1 Division of Property:

1.1 Wife's Residence

1.1.1 Since on or about July 16, 1989, the Wife has been the sole and separate owner of

the marital residence and property known as 1035 Paxton Avenue, Cincinnati, OH 45208-2828, in Hamilton County, Ohio (hereinafter referred to as the "Wife's Residence") as more particularly described by (a) The Treasurer of Hamilton County as Book 046, Plat 0007, Parcel 0034, Paxton Ave 65 x 170.30 Irr, Lot 78 Faxon Hills Sub, Sec 3, Blk A; (b) General Warranty Deed with Release of Dower as executed by Husband and Wife and as recorded on 1/23/1990 in Deed Book 5194, page 954, Hamilton County, Ohio Deed Records; and (c) Letter Agreement, which was both witnessed and notarized and which was executed by Husband on July 30, 1990 and which Letter Agreement was later duly recorded in Hamilton County, Ohio Deed Records. The Wife shall continue to retain such Wife's Residence as her property, free of any claims of the Husband.

1.1.2 Due to such future capital gains tax financial liability resulting from the sale of Wife's Residence at any point in the future, the full extent of such liability which is presently unknown, Husband and Wife agree that the Court may consider in any present or future proceeding related to this divorce action Wife's future contingent liabilities, including capital gains tax, deferred maintenance, sales commission, and sales fix up expenses. Wife shall pay one hundred percent of any capital gains tax liability arising from such sale of Wife's Residence.

1.2 Personal Property

1.2.1 As a division of all personalty, household furnishings, furniture and other personal effects, the parties have agreed to and have divided all household goods and other chattel property to their mutual satisfaction, saving and excepting only for certain items as specified below. All such items so divided shall remain the property of the person with present possession, free and clear from any claims on the part of the other. As such, Wife shall retain as her property free of any claims of the Husband, all of the household furniture, furnishings, china, crystal, silverware, antiques, objects of art, computers, software, business effects and personal effects which are presently situated in the Wife's Residence, saving and excepting only for certain items as specified below. Husband shall retain as his property, free of any claims of the Wife, all of the computers, software, household furniture, furnishings, and personal effects as are presently in the Husband's possession, whether business or personal.

1.2.2 Husband shall be entitled to have one item of Children's property and one item of Husband's property removed from the Wife's Residence and delivered to Husband's Residence, provided that such items are removed, at the Husband's sole expense and liability, on or before September 1, 1997, and provided a mutually agreeable schedule for such removal can

be arranged by Husband and Wife; such two (2) items are:

1.2.2.1 Children's Gest piano: Harry Garrison Player Piano staff shall pick up and deliver the children's piano, a Gest family heirloom piano, to Husband's residence at 670 Reisling Knoll, lower level playroom. The bench of such piano is presently used by the minor child, Garrison for his computer bench, and as such, Husband shall negotiate such matter directly with Garrison, in the event that Husband wishes to procure such bench, and Wife shall accommodate any resolution of such matter agreed to by Husband and Garrison.

1.2.2.2 Husband's John Stobart's "Moonlight Over the Savannah River in 1850" print #294/950.

1.2.3 In the event that the Wife intends on disposing or selling certain items of household furnishings, such items which belonged to Husband prior to his marriage to Wife, and which items are individually listed on Exhibit "A", Wife agrees to first offer such items of furnishings to either Samuel Pogue Todd IV and or Garrison Bardes Todd, as is appropriate in Wife's sole discretion, for such child's use at Child's residence, if any and or at Father's Residence; in the event that such child does not wish to keep such item of furnishing, Wife shall offer such item to the

other child for his own use. In the event that neither child wishes to retain such furnishing at any residence, Wife agrees to orally offer such item to Husband, at no cost to Husband, except for pick-up, liability, and storage/cleaning bill, if any, prior to otherwise disposing or selling of such item. Husband shall respond to any such offer within a period not to exceed three days after notice, unless agreed otherwise by the parties.

1.3 Vehicles

1.3.1 The Wife is the owner of a 1988 Saab 9000 S which she shall retain as her property, free of any claims of the Husband. Wife shall be solely and exclusively responsible for, indemnify and hold Husband harmless from any obligation due and owning as a result of her ownership with respect to said automobile.

1.3.2 The Wife is the owner of the 1991 Volvo 740 stationwagon, which vehicle has an unrecorded lien against the title held by Wife's Mother, which vehicle Wife shall retain as her property, free of any claims of the Husband. Wife shall be solely and exclusively responsible for, and indemnify and hold Husband harmless from any obligation due and owing as a result of her ownership with respect to said automobile.

1.3.3 The Husband asserts that he does not have any equity interests whatsoever in any vehicle. Husband asserts that the Husband's parents are the owners of the blue

Ford station wagon which Husband drives.

1.4 Todd Information Resources d.b.a. Info-Resources

1.4.1 Wife shall retain as her property, free of any claims of the Husband, all of her capital stock, accounts receivable, equipment, software licenses, doubtful accounts, and any and all other tangible and or intangible assets in Todd Information Resources, Inc., an Ohio corporation, doing business as "InfoResources". Husband and Wife shall both retain the right to provide services of any kind to any and all former customers of InfoResources and or Todd EDP Audits, Inc. Husband shall forever release any and all present and or future claims against Wife relating to Todd Information Resources, Inc. and or relating to Todd EDP Audits, Inc.

1.5 In the event that Todd Information Resources, Inc. would be held liable for any services/products sold/performed/contracted which preceded May, 1994, Husband and Wife agree to equitably share in such costs/fees/required services in order to resolve such future problem(s); Husband and Wife both certify to each other that neither is aware of any such problem at the present time. Husband and Wife acknowledge and admit that all of Todd Information Resources' customers willingly and knowingly became customers of husband's self employment consulting business, after Husband left his association with Wife's firm in March, 1994, as a result of the parties professional divorce and that Todd Information Resources survives only as a corporate shell. The

parties acknowledge Wife's rights to raise any and all TIR related issues including but not limited to Wife's contribution to and funding of such business during any further proceedings in this divorce action.

1.6 Dissolution of Todd EDP Audits, Inc.

1.7 Within thirty days of the execution of these Stipulations, the Husband and Wife shall execute the documents and take other steps necessary to dissolve the inactive Ohio Corporation known as Todd EDP Audits, Inc. Husband and Wife shall share equally certain costs incurred in dissolving said corporation, such costs estimated to be less than $100.00 or one hundred dollars; Wife shall prepare any paperwork necessary and Husband shall pay his own attorney fees related to this matter, if any. Husband shall be solely and exclusively responsible for, indemnify and hold Wife harmless from any obligation due and owing as a result of their ownership with respect to said corporation, except as specifically provided herein. Wife shall indemnify and hold Husband harmless from any obligation due and owing as a result of their ownership with respect to said corporation, except as specifically provided herein for spousal support. The parties acknowledge Wife's rights to raise TEA related issues in any further proceedings in this divorce action.

1.8 Husband's Self Employment Business

1.8.1 Husband shall retain as his property, free of any claims of the Wife's, all of his accounts receivable, equipment, software licenses, doubtful accounts, and any and all other tangible and or intangible assets in his self-employment computer consulting business. Husband shall be solely and

exclusively responsible for, indemnify and hold Wife harmless from any obligation due and owing as a result of his ownership with respect to said self-employment business. Without acknowledging Wife's contributions to this business, the parties agree to preserve for future proceedings and for appeal to any Court any and all of Wife's rights to address Wife's contributions to such business, without restrictions or limitations of any kind.

1.9 Husband's Deloitte & Touche Pension

1.10 Husband shall retain as his property, free of any claims of the Wife's, his pension with his former employer, Deloitte Haskins & Sells/Deloitte & Touche, provided that Husband pay to Wife, simultaneous with the execution of these Stipulations, an amount equal to such amount which is **Total Wife's Share to be calculated as follows:** twenty five percent (25%) of one hundred percent (100%) of Husband's total interest in the Deloitte & Touche Pension Plan, such interest to be calculated as of the date of May 15, 1997, to be calculated on the to be initialed, but not attached worksheet. Husband shall pay any costs of calculating such amount outright and such costs shall not be deducted from Total Wife's Share. Such amount shall be calculated by an impartial actuary chosen by the Wife from a list provided by the Husband. This payment shall be a transfer of marital property and shall not represent taxable income to the Wife, nor shall such payment be tax deductible to Husband. In the event that Total Wife's Share cannot be agreed upon by the parties and paid to Wife in full within thirty days of the execution of these Stipulations, this court

shall retain jurisdiction to determine the issue upon proper motion.

1.11 Husband's IRAs

1.12 Husband shall retain as his property, free of any claims of the Wife's, his Ross Sinclaire & Associates, IRA, # 3KW-082469.

1.13 Husband shall retain as his property, free of any claims of the Wife's, his New England Life Pension Properties Limited Partnerships, I, III, IV, V, such limited partnerships which are in Husband's Resources Trust Co. IRA.

1.14 Husband shall retain as his property, free of any claims of the Wife's, his Resources Trust Co. IRA mutual fund accounts, specifically: (a) Resources Trust Company Acct. #2748313, New England Growth Fund; (b) Resources Trust Company, #3700836, New England Bond Income Fund, (Resources Trust Company, 8051 E. Maplewood Dr., Englewood, CO 80111, 1/800/525-9054.

2 Life Insurance & Life Insurance related Investments

2.1 Husband shall retain 100% or one hundred percent of the cash values and paid-up additions of his life insurance policies, issued by New England Mutual Life Insurance (NEML), such policies as itemized below, provided that Husband pay to Wife, simultaneously with execution of these Stipulations, an amount equal to **Total Wife's Share to be calculated as set forth on the** attached Worksheet or as agreed by the parties. Such NEML policies are: Policy 6887512: Basic Policy ($40,000); Policy 6887514: Basic Policy ($64,700); Policy 6795632: Basic Policy ($60,000). This payment shall be a transfer of marital property and shall not represent taxable income to the Wife, nor shall such payment be tax deductible to

Husband. In the event that Total Wife's Share cannot be agreed upon by the parties and paid in full to Wife within thirty days of the execution of these Stipulations, this court shall retain jurisdiction to determine the issue upon proper motion.

2.2 Husband shall retain 100% or one hundred percent of the Non-IRA investments issued by New England Mutual Life Insurance (NEML), such non-IRA investments only as itemized below, provided that Husband pay to Wife, simultaneously with execution of these Stipulations, an amount equal to, **Total Wife's Share of $819.00 or eight hundred and nineteen dollars** as calculated on the initialed, but not attached Worksheet. Husband stipulates that Husband has no liens against such investments. This payment shall be a transfer of marital property and shall not represent taxable income to the Wife, nor shall such payment be tax deductible to Husband.

3 Marketable Securities-Non-IRA, Except New England

3.1 The Wife shall retain as her property, free of any claims of the Husband, any and all of the stocks titled in her name(s) all of which represent her separate and or premarital holdings, investments and equities which itemization was delivered to Husband's counsel together with an itemization of those Wife's premarital and separate securities currently held in Wife's separate brokerage account maintained at Ross, Sinclaire & Associates, Inc., Cincinnati, account number #3KW078848.

3.2 The Husband shall retain as his property, free of any claims of the Wife's, any and all of the securities, equities and or stocks titled in his name(s),

which securities, equities and or stocks are presently held in one of the husband's following accounts: Ross, Sinclaire & Associates: 3KW-085066 (Samuel P. Todd III, ATTN. Fund A); Ross, Sinclaire & Associates: 3KW-077600 (Closed). *See insurance section for New England related investments.*

4 Pre 75(M) Back-Owed Child & Spousal Support

4.1 Simultaneous with the Execution of these Stipulations, Husband shall pay to wife, **$900.00**, or nine hundred dollars, for December, 1994 child support, before adjustment below, which month Husband failed to pay to wife any support, as per their ongoing written and oral agreements, pre 75(M) order effected 12/31/1994.

4.2 Simultaneous with the Execution of these Stipulations, Husband shall pay to wife, **$1,611.00** or one thousand six hundred and eleven dollars, which amount is calculated as follows: as an adjustment on child support paid to Wife for the months, April-December, 1994, as per the parties ongoing written and oral agreements to pay to Wife the amount that the court ordered retroactively to the first month after Husband moved out of marital residence; such amount would be equal to the difference between the 75(M) Order of $1,079 per month child support and the $900 per month already paid by Husband to Wife, to net a difference of $179/month times nine months, or $1,611.00.

5 Checking and Savings Account

5.1 Wife shall retain as her property, free of any claims of the Husband, the balance currently on deposit in the Wife's personal checking account

maintained at Star Bank, Cincinnati, account #483470621, D'Ellen Bardes.

5.2 The Husband shall retain as his property, free of any claims of the Wife, the balance currently on deposit in the Husband's checking account maintained at Society Bank, Cincinnati, account 200-309-0113.

5.3 Husband shall retain as his property, free of any claims of the Wife, the balance currently on deposit in the Husband's Money Market Savings Account at Society Bank, #073-155-2849, Samuel P. Todd III.

5.4 Husband shall retain as his property, free of any claims of the Wife, the balance currently on deposit in the Husband's Money Market Savings Account at Society Bank, #200-058-2880, Sam Todd.

5.5 Husband shall retain as his property, free of any claims of the Wife, the balance currently on deposit in the Husband's Money Market Savings Account at Society Bank, #200-309-0993, Samuel Todd III.

5.6 The Husband shall retain as his property, free of any claims of the Wife, the balance currently on deposit in the Husband's checking account maintained at Fifth Third Bank, account #10694683.

5.7 The Husband shall retain as his property, free of any claims of the Wife, his Certificate of Deposit, #091-0094611194, issued by Fifth Third Bank

5.8 Husband shall retain as his property, free of any claims of the Wife, the balance currently on deposit in the Husband's Savings Account maintained at Cheviot/Cincinnati Federal Savings & Loan #8218-00.

6 Parents/Children's Custodial Accounts

6.1 Husband and Wife contemplate that all of the children's present and future accounts, children's custodial funds, and children's past, present and future trusts' interests shall be utilized solely in the best interests of the children for their Education, Health and Welfare and neither party shall diminish, sell, spend, use or encumber these funds except to reasonably provide for the Health, Education and Welfare of Samuel Pogue Todd IV and or Garrison Bardes Todd.

6.2 Husband shall retain as his/Samuel Pogue Todd IV, minor, custodial accounts, as follows: Ross, Sinclaire & Associates, 3KW-079101; Society M/M Savings, #0731552930; Society, #81002967680 (C.D.); Cheviot, #03-00-001032.

6.3 Husband shall retain as his/Garrison Bardes Todd, minor custodial accounts, as follows: Ross, Sinclaire & Associates, 3KW-079119; Society M/M Savings, 073-155-2801; Society, #8100-296767-8 (C.D.); Cheviot Savings Acct., #03-00-001033.

6.4 Wife shall retain as her/Samuel Pogue Todd IV, minor, custodial accounts, as follows: Ross, Sinclaire & Associates, 3KW-082832; Gradison: #57542-05-00-2.

6.5 Wife shall retain as her/Garrison Bardes Todd, minor, custodial accounts, as follows: Gradison, #57542-05-01-0; Ross, Sinclaire & Associates, #3KW-082824.

6.6 Husband warrants and represents to the Wife that there are no other known custodial or other funds which he, any extended family member or any representative or any agent/entity holds for the benefit of either child, either directly or indirectly and or through any inter vivos trust(s) and

or family limited partnership(s) and or any other trust or financial planning instrument(s) and or organizations, which are not specifically listed in either this section or the next section on Trusts.

6.7 Wife warrants and represents to the Husband that there are no other known custodial or other funds which she, any extended family member or any representative or any agent/entity holds for the benefit of either child, either directly or indirectly and or through any inter vivos trust(s) and or family limited partnership(s) and or any other trust or financial planning instrument(s) and or organizations, which are not specifically listed in either this section or the next section on Trusts.

7 Husband's and Children's Trusts' Interests

7.1 The parties acknowledge that Husband and Samuel Pogue Todd IV, minor and Garrison Bardes Todd, minor have various interests in certain trusts established by Husband's family, as more specifically set forth in each of the following three (3) separate trust instruments, each and every such complete trust instrument which is hereby fully incorporated by reference in these Stipulations, as if rewritten word for word in its entirety, each of such instruments which are initialed by the parties and attached hereto, are first,

7.1.1 (a) Exhibit "B": *Samuel Pogue Todd (Sr.) Intervivos Trust*: PNC Bank, Ohio, National Association, Successor By Merger to the Central Trust Company, National Association, F/K/A. The Central Trust Company National Association of Cincinnati, OH, F/K/A Citizens National Bank & Trust Company And Or F/K/A Fourth & Central Trust Company, As Co-Trustee, along

with Samuel Pogue Todd, Jr. (children's paternal grandfather, original agreement dated January 10, 1969), Co-Trustee, along with Joseph D. Landen, (children's paternal uncle), Co-Trustee, Under Amended Agreement Dated January 27, 1997 With Samuel Pogue Todd, Deceased, (children's paternal great grandfather, Hamilton County, OH, Estate #791682, date of death: 3/1/1979), Settlor; and second,

7.1.2 (b) Exhibit "C": *Samuel Pogue Todd, jr. Inter Vivos Trust*: PNC Bank, Ohio, National Association, Successor By Merger to the Central Trust Company, National Association, F/K/A The Central Trust Company national Association of Cincinnati, OH, F/K/A Citizens National Bank & Trust Company And Or F/K/A Fourth & Central Trust Company, As Trustee By Amended Agreement Dated January 22, 1996 With Samuel Pogue Todd, Jr. (children's paternal grandfather, original unfunded living trust agreement dated December 3, 1990), Grantor; and third,

7.1.3 (c) Exhibit "D": *Samuel Pogue Todd III Trust*: Samuel Pogue Todd III, (children's father/Husband), As Trustee, By Agreement Dated December 20, 1993 With Samuel Pogue Todd III (children's father/Husband), Settlor.

7.1.4 Without waiving any rights as provided by statutes, and or as may be provided by future statutes, and or as may be provided by present or future common law, and or as may be otherwise ordered by any court in future proceedings, Husband and Wife agree to cooperate

with the Trustees of the above trusts and with each other in order to submit requests for distributions from such trusts as seems appropriate, given the discretionary nature of such trusts, and given the fact that the Husband's paternal grandmother, Ruth Ulland Todd, is still alive and well, at age 97+ and relies on the funded trust of Samuel Pogue Todd for her support. Husband and Wife acknowledge that it is unclear to each of them exactly how such discretionary disbursements may be obtained for the benefit of the children or husband, but Husband agrees to pursue any and all such requests in good faith and to maintain relations with such trustees in order to facilitate such requests, and to respectfully involve the Wife in such process to the best of his ability.

7.1.5 Assuming that Husband and or Wife has or will have any rights to make requests for distributions at any time in the future, without exceptions or limitations of any kind, Husband and or Wife shall make such timely request(s) for monetary distribution(s) to trustee(s) of the above trusts or any other trusts, such disbursements to inure to the benefit of Husband and or to a minor child/adult child; in the event that Wife and Husband cannot agree on matters related to the pursuit and or the receipt of such discretionary and or non-discretionary distributions, such matters shall be submitted by either party to a court(s) of proper jurisdiction for resolution. This court's continuing jurisdiction shall be preserved over trust-related matters for further trial court proceedings and or for appeal to any Court, without limitation or restrictions of any kind.

7.2 Future contributions or proceeds received or "set aside" in trust or other financial planning instrument/entity for the benefit of one or both of the parties' minor children and or adult children and or any issue of such children, shall be maintained by the parent through which the funds were received in conjunction with any trustee(s) as designated by such grantor and or parent.

7.2.1 Husband shall execute a legal document, to be prepared by Husband's counsel, at Husband's sole expense, which must meet the approval of the Wife, which document provides for Full Disclosure of Any Trust Information to Wife, and which document allows Wife to either directly receive and or to obtain from either Husband and or from any trustees and or by order of this Court, the very same trusts' records, same trusts' documents, and same trusts' information, without restrictions or limitations whatsoever, which Husband either may receive as being one of two guardians of the minor children, and or which Husband or Wife may be entitled to receive by present or future statute or by present or future common law for any reason and or which Husband may be entitled to receive by virtue of Husband having a beneficial interest himself in any such trust(s), and or which either child may be entitled to receive by virtue of having any interest in any trust(s) either during their minority and or post-majority. Wife forever retains any and all rights to any of the children's and husband's trust(s) related information which she may be entitled to through any statute or common law, present or future. In the event that Husband and Wife cannot agree to such Full Disclosure

of Any Trust Information to Wife document within thirty days of execution of this Agreement, this Court shall resolve the wording of such document by Court order upon proper motion.

7.2.2 Furthermore, Wife shall receive any and all trust related and account related information to which she may be entitled to either by law and or by virtue of this Full Disclosure document, since that is the intent of the parties hereto. The parties hereby acknowledge that some information related to such trusts may not be able to be acquired by either Husband or Wife, without use of the legal process; should such legal action become necessary or seem appropriate given any facts and circumstances, either party herein preserves rights to bring any appropriate causes of action hereunder against any and all of the trustees of any and all trusts.

7.2.3 Husband shall timely provide to the Wife, one time per year, or as otherwise agreed by the parties, any and all trust(s) records and trust(s) information received by Husband without restrictions or limitations whatsoever. Husband stipulates that Wife's access to any such records and information shall be at least wholly comparable with Husband's access to such records and information. If the Court finds that a parent has used or frustrated the ongoing trust-related full-financial disclosure/request for trust distributions process without good reason, the Court shall award attorney's/mediator's fees, court costs, and financial sanctions to the prevailing parent.

8 Clubs

8.1 Wife shall retain as her property, free of any claims of the Husband, her separate membership in the Cincinnati Country Club.

8.2 Wife shall retain as her property, free of any claims of the Husband, any remaining equity Wife has in her former membership at The Cincinnati Sports Club, in the event that she would rejoin such club.

8.3 Husband shall retain as his property, free of any claims of the Wife's the Regular Membership presently held in the Husband's name at the Cincinnati Country Club, provided that simultaneous with the execution of this Stipulations, Husband shall pay to Wife, **Total Wife's Share of $7,500.00**, or the sum of Seven thousand five hundred dollars, which sum shall compensate Wife for her marital share of the Regular Membership held in Husband's name net of (a) any obligation of Husband for the debt being incurred to obtain Wife's separate membership, and net of (b) any obligations of Wife to repay Husband for any and all charges incurred by Wife and or children at such club since that date of separation. This payment shall be a transfer of marital property and shall not represent taxable income to the Wife, nor shall such payment be tax deductible to Husband.

9 Lawsuit Settlement

9.1.1 Husband asserts to Wife that Husband settled in full the wrongful discharge lawsuit which Husband and Wife, as Co-Plaintiffs filed against Deloitte & Touche, et al, Defendants, Case A-93-05284,

Court of Common Pleas, Hamilton County, Ohio, about May, 1993; Simultaneous with the execution of this Stipulations, Husband shall pay to Wife an amount equal to fifty percent of one hundred percent of the net funds in the account which has maintained such funds since their inception.; the present amount in such account is approximately $10,458.00 and as such Husband shall pay Wife **$5,229.00** or Five thousand two hundred and twenty nine dollars, which transfer of funds shall be a transfer of marital property and shall not represent taxable income to the Wife. Husband asserts to Wife that no funds have been removed from this account since its inception, since amount was net of any taxes due. This payment shall be a transfer of marital property and shall not represent taxable income to the Wife, nor shall such payment be tax deductible to Husband.

9.1.2 Each party shall forever release the other party from any and all Deloitte lawsuit related obligations, Deloitte liabilities and or present or future claims of debts owed to Deloitte & Touche and or former Ann Arbor landlord, Susan Seaburg and or any other persons or entities, to the extent to which each is able.

10 Health Insurance

10.1 Husband and Wife shall each be responsible for providing his/her own health insurance.

11 Life Insurance for Samuel & Garrison's Health, Education & Welfare

11.1 Husband's life insurance currently includes any and all policies issued on Husband's life by New England Mutual Life Insurance Company ("NEL") and or its successors and or assigns including, Policy #6887514 ($64,700 Face Amt.), Policy #6887512 ($40,000 Face Amount, plus $8,212 Paid-Up Additions to Face Amt.), Policy #6795632 ($60,000 Face Amt.) for a total NEL Face Amt. of $172,912, plus the Computer Horizon's term insurance policy of $50,000, for a total current amount of approximately $222,912.

11.2 On or about December 20, 1993, Husband voluntarily established a revocable self-administered inter vivos trust entitled The Samuel Pogue Todd III Trust to provide for the health, education and welfare of the two children, Samuel Pogue Todd IV and Garrison Bardes Todd in the event of the Husband's death. At that time, Husband asserts that he voluntarily made such trust the sole beneficiary of Husband's NEL policies, and made the two minor children the beneficiaries of such trust and now reiterates such continued intentions.

11.3 The Husband shall be obliged to continue to maintain such NEL life insurance on Husband's life which insurance shall remain unencumbered and free of liens and or other clouds against such investments, and which insurance shall deliver to Samuel Pogue Todd IV the death benefit amount of a minimum of $75,000 or seventy five thousand dollars, via a sub-trust/account in strictly Samuel Pogue Todd IV's name in the above trust instrument, and which insurance shall deliver to Garrison

Bardes Todd the death benefit amount of a minimum of $75,000 or seventy five thousand dollars, via a subtrust/account in strictly Garrison Bardes Todd's name in the above trust instrument, such dollar amounts to be calculated as of the original date of distribution of such insurance settlement funds from such insurance company(ies) to such subtrust(s), or as otherwise agreed by the parties.

11.4 In the event of Husband's death, the trustees of the Samuel Pogue Todd III Trust shall administer such trust in good faith to inure to the benefit of each of the two children and in accordance with the terms and conditions of such trust and shall pay obligations and or expenses of either Samuel Pogue Todd IV and or Garrison Bardes Todd upon request by either child and or by Wife, as sole guardian of the children, in the event that such children are still minors; in the event that any disputes arise with regard to such discretionary or mandatory disbursements from such trust, Wife reserves any and all rights to have such matters resolved by any Court with proper jurisdiction over this matter and hereby sets forth this Court's continuing jurisdiction over this matter.

11.5 Periodically, upon request from the Wife, made not more frequently than annually, the Husband shall provide the Wife with written evidence that policies of life insurance required pursuant to this Section are (a) being maintained, and (b) comply with the beneficiary and all other designation(s) and purpose(s) as herein required, and (c) that any premiums and fees have been timely paid.

11.6 The Husband shall from time to time be entitled to substitute the policies of life insurance maintained on his life and which are payable to the Samuel P. Todd III Trust so long as the Samuel P. Todd III Trust is always maintained to pay the minimum death benefits to each child as set forth above and to meet other conditions as set forth above. Any and all of such "substitute" insurance shall be issued from a top quality company/product line which carries the highest quality rating in the insurance industry, as rated by one of the premier rating services, in the event that such insurance would be altered from Husband's present policies as set forth in this Section.

12 Tax Claims & Tax Returns

12.1 Husband and Wife have filed joint federal, state and municipal income tax returns during the marriage, for tax years 1988 through 1993 inclusive. In the event any such taxing authority levies a deficiency or assessment in connection with any previously filed joint tax return, then the parties shall cooperate with one another in making a determination whether to pay or to contest such deficiency or assessment. Each party agrees to cooperate with the other and to supply to the other such documentation as is needed to contest any such proposed assessment.

12.1.1 At such time as a final determination is made by the parties jointly with the proper taxing authority concerning any such proposed deficiency or assessment, each party shall be responsible for paying one-half of any such sums due together with one-half of any penalty

and/or interest assessed provided, however that such deficiency or assessment relates to a former marital asset. In the event that any portion of such deficiency or assessment pertains to an asset which was the nonmarital property of either party, then to that extent the party owning the non-marital asset shall pay such sum due together with such penalty and/or interest; for the purpose of this paragraph; [sic] companies which both Husband and Wife were associated with included PCTechServices, Todd Information Resources, Inc. d.b.a. InfoResources and Todd EDP audits, Inc. and shall be considered to be former marital assets for this purpose. As an inducement to Wife and Husband, sharing such potential liability, resulting from marital assets, Husband and Wife each represent and warrant to the other that each has no knowledge of any pending or asserted claims by any governmental taxing authority for any of tax years 1988 through 1993 inclusive, except for Personal Property Tax Liability for Todd EDP Audits, Inc. for 1992. The parties agree that within sixty days of the Entry Filing Date of this Stipulations, that the parties shall file such 1992 Personal Property Tax form to the I.R.S. with payment due, if any.

[12.2]
Each party shall be responsible for all capital gains tax liability incurred in connection with the future sale or transfer of any assets that either party has retained or receives as a result of this division of

property and the party with the asset shall indemnify and hold the other party harmless thereon, except as specifically set forth in these Stipulations.

12.3 Husband shall be entitled to claim the two children as Husband's dependents strictly for purposes of exercising the Dependency Exemption for the 1997 tax year and any and all future federal, state, and local income tax purposes, provided that each and every year that Husband exercises such exemption(s), prior to the children reaching the age of majority or post-majority, Husband shall pay to Wife the same amount that Wife would have saved on her taxes, in the event that Wife claimed two children as Wife's dependents for the purposes of exercising such Dependency Exemption(s); in the event that Husband's income and or remarried income for tax purposes would exceed the maximum allowed in which one was able to profitably take such dependency exemptions, in any given year, such dependency exemption would be declared by Wife for such year and Husband shall execute any required I.R.S. forms to entitle her to take such exemptions.

12.3.1 Any such funds transferred from Husband to Wife hereunder shall be regarded as a transfer of property and as such shall not be declared as income to Wife and shall not be tax deductible by Husband, except in the event and only in the event that the I.R.S. would mandate that such agreed property transfer be declared as alimony income by the Wife and mandate then that such agreed property transfer be declared as an alimony deduction by Husband; it is Wife's

understanding that the present I.R.S. regulations require property transfers related to divorces to be completed within 60 months after entry of such decree or other date certain, after which such property transfers are deemed as alimony payments/income. As such, in the event that after such five years of properly declaring such property transfers, the I.R.S. would demand such alimony declarations, the parties hereto would agree that the deductibility of such amount by Husband as well as the need to declare such amount as income by the Wife would each be fully taken into consideration when calculating the amount of money which the Husband should pay to Wife in order to make Wife whole again, after Husband's use of the dependency exemptions. It is the parties intent herein that husband shall pay to Wife an additional amount equal to the amount in taxes required to be paid by Wife and that Husband's calculation as to the net benefit that the taking of such dependency exemptions shall return to Husband shall properly include the deductibility of such mandated "alimony payment", in order that the net financial effect on both parties is properly calculated. In the event that the parties cannot agree, this matter shall be resolved by this Court on filing of proper motion.

12.3.2 The parties agree that after one child is no longer eligible to be declared as a dependent for tax filing purposes, the parties shall continue using the one

dependency exemption in the same manner as set forth above for the use of two dependency exemptions, until such time that neither child is eligible to be declared as a dependent.

12.3.3 The parties agree that one time per year in order to properly effect the above annual property transfer, relating to the taking of dependency exemptions, the parties shall exchange preliminary and final tax filings, without restrictions or limitations whatsoever, in order to verify and continue ongoing full financial disclosure with each other and to arrive at an appropriate value for the annual property transfer.

12.4 In the event that a Child Tax Credit is enacted, Wife shall be entitled to use such credit in the event that only one parent may use such credit. Each party may be entitled to take the Medical Expense Deduction(s), when feasible, for all present, and all future federal, state and local income tax purposes; the parties agree to fully and equitably cooperate with one another in the event that only one party can effectively utilize any and all present and or future deductions/credits in any certain tax year(s). The parties also stipulate that Husband's independent consulting business provides Husband with opportunities for tax deductions and Wife has saved money each tax year through her use of Dependency Exemptions and or other such deductions/credits.

12.5 Wife shall accept responsibility to prepare the children's tax returns, as she has every year throughout the marriage and since the date of

separation, provided however that any tax due any federal, state or local taxing authority or any other tax due, shall be paid equitably from one or more of the Children's accounts and or trusts. Husband shall deliver to Wife all tax (1099's, etc.) and detailed account statements or duplicates thereof which support any and all transactions/year, for each and every of such children's accounts and or other financial interests, except for any accounts which are already in Mother's custody and or control, including but not limited to any and all documents and records relating to trusts, and family limited partnerships, one time per tax year, prior to March 15 of the following year. Wife shall provide Husband with a copy of such children's returns within sixty days of filing such returns.

13 Liabilities

13.1 The parties agree that this document does not address any and all liabilities to be raised before this court at property trial including children's expenses, spousal support, educational expenses, college tuition and expenses, child support, et al. as already clearly set forth above.

13.2 Each party warrants that they have made full disclosure of all debts or liabilities incurred upon the obligation of the other, and based upon such disclosures:

13.2.1 Wife agrees to assume and hold Husband harmless from each of the following marital debts:

13.2.1.1 Husband's Repayment Owed to Wife for reimbursement of Wife's Share of

the marital funds used to pay off Husband's Premarital and separate CentraLine Credit Line: Wife's Share, approximately $19,200.00 or nineteen thousand two hundred dollars, which represents 50% of total amount paid.

13.2.1.2 Husband's share of the Sidewalk assessment, Husband's share, approximately $1,000 which represents 50% of the total amount paid.

13.2.1.3 Damages caused to the interior of the Wife's Residence by Husband, which are still not corrected, including but not limited to: six-panel double exterior doors in Playroom; Basement Door, Wife's child antique desk, approximately $4,500 (estimate).

13.2.2 Husband and Wife agree to jointly assume the following obligations/debts in accordance with this Court's medical order in place at or near the time such expenses were incurred, such order which states that the parties shall share such unreimbursed medical expenses, fifty percent Husband, and fifty percent, Wife. Such amounts shall be resolved by the parties whenever such

disputed matter is resolved by the health care providers and the parties in the future.

13.2.2.1 Garrison Bardes Todd's past uninsured speech therapy bills: Amount Unknown. Matter currently in dispute with Children's Health Insurance Provider, Prudential Insurance and Children's Hospital.

14 Execution of Necessary Documents & Acknowledgments

14.1 Simultaneous with the Execution of these Stipulations, Husband and Wife shall execute any and all special warranty deeds, dissolution papers, or other documents, and perform any act which may be required or necessary to carry out and effectuate any and all of the purposes and provisions set forth in these Stipulations, including but not limited to the following: Quit Claim Deed; Execution of dissolution papers for Todd EDP Audits, Inc.; TEA 1992 Personal Property Tax; Trust Records Release; et al. Any payments to be made by Husband to Wife simultaneous with Execution of these Stipulations shall be made via Certified Cashier's Check(s) upon execution of these Stipulations. The parties recognize that payments which amounts are not known as of the date of execution may need to be lagged until such calculation can be made, such calculations, if any, which shall be made within thirty days of execution of this Agreement.

14.2 If either party shall fail to comply with the provisions of this Section, these Stipulations shall constitute an actual grant, assignment and conveyance of property rights and any other rights in such manner, and with such force and effect, as shall be necessary to effectuate the terms of these Stipulations. In the event that the Wife is obliged to effect legal recourse against the Husband in order to carry out the terms and conditions of these Stipulations, except as provided herein, Husband shall pay for any and all of Wife's reasonable legal fees, Court costs, mediation expenses, and other expenses incurred due to such proceedings. In the event that the Husband is obliged to effect legal recourse against the Wife in order to carry out the terms and conditions of these Stipulations, except as provided herein, Wife shall pay for Husband's reasonable legal fees, Court costs, mediation expenses, and other expenses incurred due to such proceedings.

14.3 Each party fully understands all of the terms set forth in these Stipulations and that all of the terms of these Stipulations represent and constitute the entire understanding regarding Property Settlement between the parties. Each party has read these Stipulations and finds the same to be in accordance with his or her understanding, and that each does hereby voluntarily execute these Stipulations and affix his or her signature hereto in the presence of the witnesses below with the understanding that such Stipulations shall be final and binding upon both parties, their heirs, devises, legatees, executors, beneficiaries, administrators, representatives and assigns. It is the parties intent that these Stipulations may be fully incorporated as

an Exhibit into a final Separation Agreement executed by the parties or as ordered by this Court.

15 Legal Expenses & Court Costs

15.1 The Husband shall pay any and all of his attorney fees, any and all of the outstanding mediation fees, if any, and any and all of the outstanding parenting investigation costs incurred at any time during this divorce action. Furthermore, Husband also shall pay any other court costs incurred up through the date of execution of these Stipulations up to an amount of one thousand dollars, or $1,000, after which amount the parties agree to share in the balance of such court costs, 50% Husband, 50% Wife; Husband and Wife agree to pay anticipating that the parties shall incorporate these Stipulations into a still-to-be-executed Separation Agreement, if any, which in any event shall be further incorporated into a Divorce Decree to be filed in the Hamilton County Court of Common Pleas, Division of Domestic Relations. This court and or any appellate Court shall retain jurisdiction relating to the allocation of court costs incurred following the execution of these Stipulations, absent agreement of the parties.

15.2 Simultaneous with the execution of these Stipulations, Husband shall pay to Wife the amount of Five Thousand Dollars or **$5,000.00** towards reimbursement of the legal fees, incurred and paid by Wife on or before May 15, 1997, in this divorce action. Such sum shall represent a partial division of property to Wife and shall not represent taxable income to Wife. The provisions in this Section do not represent in any circumstances a waiver of the Wife's right to

apply for costs and or attorney's fees, litigation related-expenses, or other related expenses of any kind whatsoever which costs are incurred after April 1, 1997 due to discovery, further trial court proceedings, appeals to any Court(s) and or by or through any orders of any Courts.

16 Amount Due & Payable Upon Execution of Property Settlement Stipulations:

16.1 $819 (New England except Life Insurance) + $900 (Back Child Support) + $1,611 (Back Child Support) + $7,500 (CCC set off) + $5229 (D&T Litigation) + $5,000 (Attorney's Fees) + any other amount due simultaneous with execution of this Agreement inadvertently omitted herein = **$21,059.00** of which $10,000, shall be paid on 5/6/1997 with the balance due on or about May 20th, 1997.

16.2 Court costs shall be paid directly to this Court.

16.3 Any amounts still to be calculated as set forth in these Stipulations shall be paid to Wife by Husband simultaneously with settlement of each and every such amount, prior to Wife waiving any and all of her claims against such assets, all of which shall be completed within thirty days of execution of these Stipulations, or such matters shall be resolved by this Court upon proper motion.

17 Exhibits and Attachments to follow include:

17.1.1 Exhibit "A": Property to Which Husband Has Express Rights

17.1.2 Exhibit "B": *Samuel Pogue Todd (Sr.) Inter Vivos Trust:*

17.1.3 Exhibit "C": *Samuel Pogue Todd, Jr. Inter Vivos Trust:*

17.1.4 Exhibit "D": *Samuel Pogue Todd III Inter Vivos Trust*

17.1.5 Exhibt "E": Support for Calculation of Life Insurance Cash Values Division

IN WITNESS WHEREOF Husband and Wife have affixed their signatures to ~~multiple~~ one originals of this Property Settlement Stipulations on the 5th day of May, 1997.

/s/ D'Bardes

Dee Ellen G. Bardes, Wife/Plaintiff Pro Se

WITNESSES AS TO WIFE:

/s/ William S. Abernethy
William S. Abernethy, Jr.,
Strauss & Troy, L.P.A.
Counsel for Defendant

/s/ Samuel P Todd III
/s/ Samuel P. Todd III

Samuel Pogue Todd III, Husband

WITNESSES AS TO HUSBAND:

/s/ William S. Abernethy, Jr.,
William S. Abernethy, Jr.,
Strauss & Troy, L.P.A.
Counsel for Defendant
/s/ D'Bardes

Respectfully Submitted,
/s/ D'Bardes
Dee Ellen G. Bardes, Plaintiff Pro Se
1035 Paxton Avenue
Cincinnati, OH 45208-2828
513/871-4959

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of May, 1997, this Stipulations was hand delivered to William S. Abernethy, Counsel for Defendant, Strauss & Troy, 2100 PNC Center, 201 East Fifth Street, Cincinnati, OH 45202 and was hand delivered to Defendant, Samuel P. Todd III, 670 Riesling Knoll, Cincinnati, OH 45226 on this same day.

/s/ D'Bardes

Dee Ellen G. Bardes,
Plaintiff Pro Se

EXHIBIT "A"

Property Still At Marital Residence To Which Husband Has Express Rights

The Following items are those I would like 'first dibs' on:

LOCATION	ITEM
Master Bedroom	Foot Chest
Samuel's Room	Chair
	"Bed, frame, mattress, headboard"
	chest
	corner desk w/hutch
	chest w/hutch
	chest in closet
Garrison's Room	long chest of drawers

Living Room	Metronome
Dining Room	Rug Wooden chair
Kitchen	Wooden chair Kids Table
Family Room	Rug Red Lamp Motartz [sic] Book Ends
Peach Room	Rocker
Garage	Wooden Shelves

/s/ D Bardes

EXHIBIT "B" [T.d. 127]

PNCBANK
(513) 651-8323

Exhibits "B-D" are not attached here, T.d. 341 due to length of trust documents [see T.d. 127]

June 14, 1996

James J. Chalfie, Esq.
36 East Seventh Street
Suite 1600
Cincinnati, Ohio 45202

Dear Jim:

Re: Bardes v. Todd

This is in response to the "Subpeona to Produce Documents" served upon PNC Bank relevant to the captioned divorce action.

The only [sic] trust under management and PNC Bank in which Samuel P. Todd, III, Samuel Pogue Todd, IV, or Garrison Bardes Todd may benefit is the Amended Trust Agreement dated January 27, 1971 between Samuel P. Todd, Settlor, and Samuel P. Todd, Jr., Joseph D. Landen, and The Central Trust Company, N.A., Trustees. Enclosed is a copy of that trust agreement. The current market value of this account is approximately $215,000.

Sincerely,

/s/ Keith K. Johnson
Keith K. Johnson
Senior Counsel
Legal Department

cc: Ronald J. Retzler

toddltr.614

/s/ D Bardes

[EXHIBIT E T.d. 127]

EXHIBIT "E": SUPPORT FOR CALCULATIONS OF LIFE INSURANCE CASH VALUES DIVISION

ERRORS ARE SUBJECT TO BEING CORRECTED BY EITHER PARTY

***1* Life Insurance & Life Insurance related Investments**

1.1 Husband shall retain 100% or one hundred percent of the cash values and paid-up additions of his life insurance policies, issued by New England Mutual Life Insurance (NEML), such policies as itemized below, *provided that Husband pay to Wife, simultaneously with execution of these Stipulations, an amount equal to* _____ *which is calculated as follows*: fifty percent of the difference between the sum of the basic policy values plus the paid up additional insurance policy value as of the date December 30, 1993; after such initial figure is calculated, such amount is then to be multiplied by the actual growth rate for the period, 12/93 and 5/97, as calculated by the figures below, and such resultant amount paid to Wife. Husband stipulates that Husband has no liens against such policies' cash values.

1.2 Such NEML policies are:

1.2.1 Policy 6887512: Basic Policy ($40,000)

1.2.1.1 Cash Value as of 5/26/1988: $3,236.04

1.2.1.2 Cash Value as of 12/17/93: $5,544.63 -3236.04=$2,308.59 divided by 2=$1,154.29, plus growth factor

---

1.2.1.3 Cash Value as of 7/19/94: $6,240.09 (from Wife's prop. stmt, pg. 29)

1.2.2 Cash Value: $5,026.00, plus Paid-up Adds ($8,212.) Cash Value of $1,855.43, to total $6,881.43 as of 6/12/95.

1.2.2.1 Cash Value as of 3/18/97: Basic Policy Cash Value, $6,061.60+ Cash Value Paid Up Additions, $2,293.47= $8,355.07

1.2.2.2 Calculation of Wife's Share of Cash Value:

1.2.2.3

1.2.2.4

1.2.3 Policy 6887514: Basic Policy ($64,700)

1.2.3.1 Cash Value as of 5/26/1988: $2,545.65

1.2.3.2 Cash Value as of 12/17/93 =$6,525.51-2545.65=$3,979.86 divided by 2= $1,989.93 before growth rate factored in _____

1.2.3.3 Cash Value as of 7/19/94: $6,932.28 (from Wife's prop. stmt, pg. 29)

1.2.3.4. Cash Value: $7,726.80 as of 6/12/95 (Cash Dvd).

1.2.3.5. Cash Value as of 3/18/97: Basic Policy Cash Value, $9,380.53

1.2.3.6. Calculation of Wife's Share of Cash Value:

1.2.3.7

1.2.3.8

1.2.3.9

1.2.4 Policy 6795632: Basic Policy ($60,000)

1.2.4.1 Cash Value as of 5/26/1988: WAITING FOR FROM LOCY

1.2.4.2 Cash Value as of 7/19/94: $7,465.20 (from Wife's prop stmt, pg. 29)

1.2.4.3 Cash Value: $8,046.75 as of 6/12/95 (Cash Dvd).

1.2.4.4 Cash Value as of 3/18/97: Basic Policy Cash Value: $9,113.10; Dividend: $312.00; Terminal Dividend $56.40.

1.2.4.5 Calculation of Wife's Share of Cash Value: STILL NEED 88 FIGURES

1.2.4.6

1.2.4.7

1.2.4.8

1.2.4.9

1.2.4.10 Wife's Total Share: _____

1.3

Husband shall retain 100% or one hundred percent of the Non-IRA investments issued by New England Mutual Life Insurance (NEML), such non-IRA investments only as itemized below, *provided that Husband pay to Wife, simultaneously with*

*execution of these Stipulations, an amount of $818.58** which is equal to the following calculation as supported below*: fifty percent of the difference between the value of the investment as of approximately the date July 31, 1988 and the value of the investments as of the date December 30, 1993; after such initial figure is calculated, such amount is then to be compounded annually, assuming an eight percent per year return (further multiplied by 1.08% per year for 3.3 years (the length of time between 12/93 and 4/97). Husband stipulates that Husband has no liens against such investments. This payment shall be a transfer of marital property and shall not represent taxable income to the Wife, nor shall such payment be tax deductible to Husband.

1.4 Values as of 7/31/1988:

1.4.1.1 Non/IRA Cash Mngmt Trust M/M Series, 2085987-5-=$435.70

1.4.1.2 Non-IRA/Growth Fund, 3036062-6=79.192 shares times $7.46 per share (approx.)=$595.37

Note: Adjustment not made herein for months of May, June and July, 1988; also actual growth rate of account was significantly greater than 8%, but Wife has not as yet had time to recalculate such figures to align with actual growth rate and still submit this offer sufficiently prior to Monday's meeting:* ***Wife reserves the right herein to recalculate such amounts accordingly.

1988 FIGURES STILL NEEDED PRIOR TO CALCULATION OF CASH VALUE OF POLICIES – ONLY ONE STILL NEEDED

PENSION CALCULATION NOT AS YET DONE

1.4.1.3 Total Non-IRA Mutual Fund Summary = $1,031.07

1.4.1.4 Values as of 12/31/1993 with 8 percent return 93-4/97

1.4.1.5 Non/IRA Cash Mngmt Trust M/M Series, 2085987-5- =1065.160 shares times one dollar per share = $1,065,16 minus $435.70=$629.46 divided by 2=$314.73 times 1.08=339.90 (94) times 1.08=367.10 (95) times 1.08=396.47 (96) times 1.0266 (1/3 of yr.)=$407.02

1.4.1.6 Non-IRA/ Growth Fund, 3036062-6=$10.40/ share x 118.445 shares=$1,231.83 minus $595.37=$636.46 divided by 2=$318.23 times 1.08=343.68 (94) times 1.08=371.18 (95) times 1.08 (96)=400.87 times 1.0266 (1/3 of yr.) (97)=$411.56

*1.4.1.7 Payment due to Wife for Non-IRA Insurance Related Investments: $407.02+ $411.56=$818.58***

EXHIBIT B

[T.d. 341]

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES a/k/a D'ELLEN BARDES TODD SS #: 270-52-9846 DOB: 07/21/56 Plaintiff vs. SAMUEL POGUE TODD III SS #: 293-56-1656 DOB: 10/9/54 Defendant	:	**CASE NO. DR9402798** **FILE: E 194749-0-7** **Judge Penelope Cunningham** **Magistrate William Murphy** **ADDENDUM TO PROPERTY SETTLEMENT STIPULATIONS**

(FILED AUGUST 23, 1999, T.d. 308)

The parties hereto, Dee Ellen Garrison Bardes (Wife) and Samuel Pogue Todd, III (Husband) entered into Property Settlement Stipulations on or about May 5, 1997.

At that time, there were property issues left unresolved including, but not limited to:

1. Quit Claim Deed from Husband to Wife for real estate located at 1035 Paxton Road, Cincinnati, Ohio 45208;

2. Payment to Wife of a lump sum for Husband's interest in Deloitte & Touche Pension Plan (Section 1.10 of Property Settlement Stipulations);

3. Payment to Wife of a lump sum for Husband's interest in cash value of policies of insurance on his life.

The parties have now resolved these three (3) issues as follows:

1. Husband has delivered to Wife a Quit Claim Deed to the real estate; and Wife shall retain the real estate free and clear of any claim of Husband. Wife shall also be responsible for any and all debts, including real estate taxes, insurance, etc. related to the real estate and shall H[sic]old Husband harmless thereon.

2. Husband has paid to Wife the sum of $7,400.00 for Wife's interest in the pension plan and cash value of life insurance. Husband may now retain his interest in the pension plan and cash value in the policies of life insurance on his life, free and clear of any claim of Wife.

Pursuant to Section 1.7 of the Property Settlement Stipulations, Husband has executed all documents necessary to dissolve Todd EDP Audits, Inc. and will share equally with Wife in the costs of dissolution.

Any and all other terms of the Property Settlement Stipulations shall remain in full force and effect and shall not be affected hereby.

This Addendum is dated the 18 day of November, 1998.

WITNESS:

/s/ Samuel Todd IV
Printed Name:

/s/ Dee Ellen G. Bardes
Dee Ellen Garrison Bardes
11/18/98

/s/ Samuel P. Todd III
Printed Name: _____

/s/ Wm. S. Abernethy
Printed Name:
William S. Abernethy, Jr.

/s/ Samuel Pogue Todd, III
Samuel Pogue Todd, III
11/18/98

/s/ Marsha Bowen
Printed Name:
Marsha Bowen

[T.d. 341, Exhibit C Incorporating T.d. 151]

EXHIBIT C

Dee Ellen Bardes
Plaintiff/Pro Se

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'ELLEN BARDES a/k/a D'ELLEN BARDES TODD SS #: 270-52-9846 DOB: 07/21/56 Plaintiff vs. **SAMUEL POGUE TODD III** SS #: 293-56-1656 DOB: 10/9/54 Defendant	CASE NO. DR9402798 File: E 194749-0-7 C.S.E.A.: ___ Judge Penelope Cunningham Magistrate William Murphy STIPULATIONS: FATHER'S TRUSTS' EXPERT WITNESSES & TESTIMONY, & POST TRIAL PROFFERS (FILED JUL. 29, 1997) [T.d. 151]

It is hereby stipulated by both parties and counsel, for the purpose of any child support, and spousal support hearings held on the 15th day of May, 1997, and the 31st of July, 1997, and any other future dates:

1 The following witnesses shall be fully considered as "Expert Witnesses" by this Court, on either the basis of their respective Curriculum Vitae which are attached hereto or otherwise filed with this Court, or on the basis of their titles and positions and duties with their respective employers, whichever may be applicable:

1.1 **Ronald J. Retzler, Senior Vice President, Investment Management & Trust, PNC Bank**

1.2 **Scott Swan, Assistant Vice President and Trust Officer for the Trust of Samuel P. Todd, Jr., PNC Bank**

2 Any testimony given by Mr. Retzler on any date, shall be considered "expert opinion" and or "expert testimony" by this or any Court, provided that if any such trust instruments, statements, reports, articles, or opinions also contain statements of fact, each statement of fact shall also separately be fully considered and admissible into evidence as a "fact" without limitations or restrictions of any kind, due to effecting these Stipulations, [assuming that the fact or facts are relevant and otherwise admissible as evidence.] [WSAJ DB]

3 In lieu of initial testimony from Mr. Swan and or additional testimony from Mr. Retzler, Plaintiff (Wife), may present and admit into evidence written statements, reports, articles, or opinions garnered directly or indirectly from the above experts to this Court. Any such statements, reports, articles, or opinions [relevant to this case and admissible as evidence] shall be considered "expert opinions" and or "expert testimony" by this or any Court, provided that if any such statements, reports, articles, or opinions also contain statements of fact, each statement of fact shall also separately be fully considered and admissible into evidence as a "fact" without limitations or restrictions of any kind, due to effecting these Stipulations, [assuming that the fact or facts are relevant and otherwise admissible in evidence.] [WSAJ DB]

4 Any written statements, reports, articles or opinions submitted as set forth herein shall constitute such expert witnesses' testimony and or additional testimony and or a proffer of the evidence, whichever may

be applicable, the same as if such testimony was delivered orally word for word at Trial, and as such any opinions and statements rendered in writing shall be designated as the "opinions and testimony of an expert witness", and as such shall be fully and appropriately considered by this or any Court, [a? illegible assuming relevancy and admissibility.] [WSAJ DB]

5 Defendant and Defendant's counsel knowingly and willingly waive any rights of confrontation at future hearings to each and every expert witness specified above in the event and only in the event that any such witness does not orally testify at any such hearings, [subject to Defendant's right to call the individuals as a witness in this case.] [WSAJ DB]

6 Defendant and Defendant's counsel shall not object to the admissibility of any such written statements, reports, articles or opinions submitted, [subject to relevancy and admissibility.] [WSAJ DB]

7 In the event that such expert witnesses fail to cooperate in the submission of appropriate and complete written statements, Plaintiff reserves the right to have such expert witnesses appear in person at any hearing or at any deposition pretrial and or post-trial.

8 Defendant's Counsel and Plaintiff agree that Plaintiff preserves any and all of her rights to prepare for her appeal to any Court, via the preparation and submission of post-trial of evidence. Plaintiff may prepare and submit either written proffers and or oral records/transcriptions of any post-trial depositions conducted by Plaintiff and or any post-trial evidence, for the purposes of filing any Post Trial Proffer(s) of Evidence on any subject matter for any Court, to facilitate the appeals process to any Court. Such Proffer(s) may be conducted, submitted, prepared and filed at any time after the July 31, 1997 hearing, without limitations or restrictions of any kind, [except that

such proffer, or proffers, must be completed prior to the entry of a decree of divorce herein. [DB WSAJ] [subject to such decree not being entered + such merits hearing not being scheduled without Plaintiff's knowledge] [DB WSAJ]

By: /s/ D. Bardes
Dee Ellen G. Bardes, Plaintiff, Pro Se
1035 Paxton Avenue, Cincinnati, OH 45208
513/871-4959

By STRAUSS & TROY:
/s/ William S. Abernethy
William S. Abernethy, Jr., (0002137),
Attorney for Samuel P. Todd III
2100 PNC Center, 201 East Fifth Street,
Cincinnati, OH 45202
513/621-2120

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has this 23 day of July, 1997 been served via hand delivery to William S. Abernethy, Jr., Counsel for the Defendant, Strauss & Troy, L.P.A., 2100 PNC Center, 201 E. Fifth Street, Cincinnati, OH 45202.

/s/ D Bardes
Dee Ellen Bardes, Plaintiff/Pro Se

PNC Bank, Ohio, N.A.
201 East Fifth Street
P.O. Box 1198
Cincinnati, Ohio 45201-1198

PNC PRIVATE BANK
(513) 651-8431

July 28, 1997

D'Ellen Bardes
1035 Paxton Avenue
Cincinnati, Ohio 45208

Dear Ms. Bardes:

Re: Revocable Trust of Samuel P. Todd, Jr. dated December 3, 1990; amended on January 22, 1996, and amended again on May 31, 1997

I am the account manager for the captioned trust.

During the life of Samuel P. Todd, Jr. the only permissible beneficiaries of the captioned trust are the Grantor and his spouse. If the Grantor's spouse should survive Grantor, the trust is divided into a marital trust from which only the spouse may benefit, and a family trust. At the spouse's death the marital trust pours over to the family trust. The family trust distribution provisions are enclosed as paragraphs (B) (1), (2), and (3). Your review of these provisions will indicate that upon the Grantor's death, his spouse, his children, and their issue are discretionary income and principal beneficiaries. The distribution standards are set forth in paragraph (1) and expanded upon in paragraph (2). Paragraph (3) provides for distribution to the Grantor's children (or the issue of a predeceased child) in equal shares upon the death of the survivor of the Grantor and his spouse.

The 1996 Amendment prohibits any distribution to Samuel P. Todd III until his divorce from D'Ellen Bardes Todd is "final."

The Grantor can withdraw any and all assets, terminate the trust, or amend the trust at any time prior to his death as long as he is competent.

Sincerely,

/s/ Scott Swan
Scott Swan
Assistant Vice President

cc: Keith K. Johnson, Senior Counsel

Plaintiff's handwritten note:
May 13, 1997 Amendment not presented to Plaintiff or court prior to May 15, 1997 trial

T.d. 340

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

Dee Ellen Garrison Bardes Plaintiff -vs.- Samuel Pogue Todd III Defendant	Case No: DR9402798 File No: E194749 CSEA No: **ENTRY** Judge Cunningham

(ENTERED DEC. 30, 1999)

The above captioned matter came before the Court pursuant to submission of the Final Judgment Entry Decree Of Divorce. Each party submitted their respective proposed decrees. On December 20, 1999 Plaintiff filed a four part motion. Said motion the Court finds is not well taken and same is denied.

The Court hereby accepts the Final Judgment Entry Decree of Divorce submitted by Defendant and costed on December 23, 1999. Said decree incorporates an effective date of September 1, 1998 for child support and preserves any arrearage in Defendant's child support account. This decree sets forth the Court's orders and upon journalization shall become the final order of the Court.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

T.d. 331

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

Dee Ellen Garrison Bardes	:	Case No. DR9402798
Plaintiff	:	Filed No. E-194749-0-7
-vs-	:	
Samuel Pogue Todd III	:	Judge Cunningham
Defendant	:	**ADDENDUM TO DECISION ON OBJECTIONS**
	:	

(ENTERED NOV. 29, 1999)

It having come to the Court's attention that Plaintiff disputes the Court's prior decision of November 1, 1999 denying her motion to set aside the stipulation regarding Defendant's 1996 disposable income, the Court hereby further addresses Plaintiff's motion.

Although Plaintiff would argue that her motion to set aside is timely and cites to her objections filed on September 9, 1998 (Sec. 33-33.5 pages 58 & 59), the Court determines the following:

1. Plaintiff's objections 33.1 through 33.5 do not include a specific objection to the parties' stipulation found on page 5, 2nd paragraph of the Magistrate's decision of August 27, 1998.

2. The record in this case establishes that the "stipulation" to which Plaintiff refers in her motion of September 23, 1999 was not a stipulation to Defendant's gross

income or Exhibit 26 or to Defendant's disposable net income. The parties' stipulation was based upon the mathematics of a presumption, i.e., that if you accept the income figures offered by Defendant in his Exhibit 26 and his expense figures, then his net disposable income per year would be $2,148.00. The Magistrate's decision clearly sets forth Plaintiff's objection to the admission of Defendant's Exhibit 26 (see page 9, 2nd line of the August 27 1998 decision).

3. In Plaintiff's objections 33.1 through 33.5, Plaintiff never objected to the "stipulation" but objected at 33.1 to each and every word and sentence in the second paragraph on page 5; at 33.2 that she did not stipulate to Exhibit 26; at 33.3 that the annual gross income figure was wrong and contrary to the weight of the evidence; and at 33.4 and 33.5 that no consideration should be given to the use of a disposable income figure for Defendant. Plaintiff's 33.1 was overruled as this is a general objection and insufficient to preserve an issue for judicial consideration. Plaintiff's 33.2 was overruled as the stipulation set forth in the second sentence does not state that Plaintiff stipulated to Exhibit 26. As noted above by this Court, the Magistrate's decision stated that Exhibit 26 was admitted over Mother's objection. Plaintiff's 33.3 was overruled as the Court believes the record does support a determination of Defendant's annual gross income at approximately $75,700. Plaintiff's 33.4 and 33.5 were overruled **since Defendant's disposable income was appropriately considered when addressing Plaintiff's request that Defendant pay/contribute to the minor children's private school tuition.**

The Court hereby affirms its decision of November 1, 1999 for the reasons set forth above.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

T.d. 330

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

Dee Ellen Garrison Bardes	:	Case No. DR9402798
	:	File No. E- 194749-0-7
Plaintiff	:	Judge Cunningham
-vs-	:	**DECISION**
Samuel Pogue. Todd III	:	
Defendant	:	

(FILED NOV. 17, 1999)

The above captioned matter came before the Court pursuant to Plaintiff's motion to harmonize duration of medical/health insurance orders with education support orders with memo XX and objections (B) filed on November 3, 1999 and Plaintiff's motion to harmonize duration of "tax benefits" child support orders, recharacterizing property as support, absent agreement and objections (A) filed on November 10, 1999. Defendant's responses thereto were filed on November 12, 1999.

The Court finds said motions are not well-taken and same are hereby overruled. The Court's order of health care shall remain in full force and effect for each minor child until such time as that child reaches the age of eighteen (18) and no longer attends an accredited high school on a full-time basis. The Court has previously

addressed the matters raised by Plaintiff in her filing of November 10, 1999.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

T.d. 325

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES	:	Case No: DR9402798
	:	File No: E194749
Plaintiff	:	CSEA No:
-vs-	:	**DECISION ON MOTION TO SET ASIDE AN OBJECTION TO 9/1/99 FINDINGS**
SAMUEL POGUE TODD III	:	Judge Cunningham
Defendant	:	

(FILED NOV. 1, 1999)

The above captioned matter came before the Court pursuant to Plaintiff's motion to set aside what Plaintiff terms the "alleged stipulation" regarding Father's 1996 disposable income or in the alternative a motion for hearing regarding the "alleged stipulation". Plaintiff also objects to the Court's findings in its decision of 9/1/99 as it relates to Defendant's income. The Court considered Plaintiff's motions and objections without oral hearing.

The Court finds the motion to set aside is not well-taken and same is hereby denied. Plaintiff's motion is not timely as the matter to which she refers was included in the Magistrate's finding of facts issued in his decision entered of record on August 27, 1998. Plaintiff failed to timely raise her objection to this finding pursuant to Civil Rule 53 of the Ohio Revised Code. The Court also hereby denies Plaintiff's request for a hearing regarding the "alleged stipulation".

Plaintiff's objections to the Court's findings are not well-taken and same are hereby overruled.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

T.d. 324

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES	:	Case No: DR 9402798
	:	File No: E194749
Plaintiff	:	CSEA No:
-vs.-	:	**DECISION GRANTING MOTION TO SET MERITS HEARING**
SAMUEL POGUE TODD III	:	
Defendant	:	Judge Cunningham

(ENTERED NOV. 1, 1999)

The above captioned matter came before the Court pursuant to Defendant's motion to set a merits hearing filed on September 21, 1999. The Court considered this motion without oral hearing. Plaintiff filed a response to Defendant's motion on September 29, 1999 followed by Defendant's reply filed on October 5, 1999. The Court has considered the response and reply.

The Court finds Defendant's motion is well-taken and same is hereby granted. The Court orders the above captioned matter be set for a merits hearing forthwith. Court costs subsequent to May 6, 1997 shall be paid by the Plaintiff except Defendant shall bear the costs associated with the filing of his Shared Parenting Plans.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

T.d. 319

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES Plaintiff -vs- SAMUEL P. TODD III Defendant	Case No. DR9402798 File No. E-194749 Judge Cunningham **ORDER FOR SUBMISSION AND DETERMINATION WITHOUT ORAL HEARING OF DEFENDANT'S MOTION TO SET MERITS HEARING**

(ENTERED SEP. 22, 1999)

Defendant's motion to set a merits hearing filed on September 21, 1999 shall be determined by the Court without oral hearing. Plaintiff shall have seven days from journalization of this order to file her response to Defendant's motion. Defendant shall have seven days to reply to any response filed by Plaintiff. Thereafter, the Court shall take the motion under submission for decision and order. Counsel for Defendant is hereby directed to remove this matter from the Court's docket.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

T.d. 318

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES Plaintiff -vs- SAMUEL P. TODD, III Defendant	:	Case No. DR9402798 File No. E-194749 Judge Cunningham **ENTRY ADOPTING FATHER'S PROPOSED SECOND AMENDED SHARED PARENTING PLAN**

(FILED SEPT. 22, 1999)

The above captioned matter came before the Court pursuant to Father's filing of his second amended shared parenting plan. The Court finds that Father's second amended shared parenting plan, filed on September 16, 1999, includes the changes requested by the Court in its entry of September 1, 1999. Therefore, the Court hereby adopts as its parenting order Father's Proposed Second Amended Shared Parenting Plan filed on September 16, 1999.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

T.d. 317

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES a/k/a D'ELLEN BARDES TODD SS #: 270-52-9846 DOB: 07/21/56 Plaintiff	:	CASE NO. DR9402798 FILE: E 194749-0-7 CSEA #AA89964/01 Judge Penelope Cunningham Magistrate William Murphy
vs.	:	**MOTION TO SET MERITS HEARING**
SAMUEL POGUE TODD III SS #: 293-56-1656 DOB: 10/9/54 Defendant	:	(FILED SEP. 21, 1999)

Now comes Defendant, Samuel P. Todd, III, through his counsel, and respectfully moves this Court for an Order setting this matter for a hearing on the merits of the divorce. Defendant states that all issues herein have been resolved either by agreement of the parties or by Order of this Court. On that basis, this matter should be scheduled for a hearing on the merits of the Divorce.

WHEREFORE, Defendant requests that this Court issue an order setting the matter for a hearing on the

merits of the Divorce and for such other relief to which Defendant may be entitled.

STRAUSS & TROY

By: William S. Abernethy
William S. Abernethy, Jr.
(0002137)
Attorney for Defendant
The Federal Reserve Building
105 East Fourth Street, 4th Floor
Cincinnati, OH 45202
(513) 621-2120

T.d. 315

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES

Plaintiff

-vs-

SAMUEL P. TODD III

Defendant

Case No. DR9402798

File No. E-194749

Judge Cunningham

CORRECTION TO DECISION AND ORDERS ENTERED OF RECORD SEPTEMBER 1, 1999

(ENTERED SEP. 3, 1999)

The Court hereby corrects the record as follows:

Plaintiff's Objections

The Court admitted into evidence Plaintiff's Exhibits A,B,C, and D during the December 4, 1998 oral argument on objections. Exhibit E was not admitted into evidence.

The parties stipulated that page two of Plaintiff's exhibit #6, entitled mother's financial resources, indicates that the value of mother's portfolio as of 10/17/97 was $710,706.00 and the Magistrate added the equity in the residence real estate and another $5,000 worth of property settlement to arrive at the figure of $838,000 as set forth on page of [sic] the Magistrate's Decision. The Magistrate's finding of the value of Plaintiff's portfolio is hereby corrected to $710,706.00.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

T.d. 314

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

Dee Ellen Garrison Bardes	:	Case No: DR9402798
Plaintiff	:	File No: E194749
- vs. -	:	CSEA No:
Samuel Pogue Todd III	:	**DECISION AND ORDERS**
Defendant	:	Judge Cunningham
	:	

(ENTERED SEP. 01, 1999)

The above captioned matter came before the Court on November 4 and December 4, 1998 pursuant to 1) Plaintiff's motion to vacate the Magistrate's Decision of August 27, 1998 ; 2) Plaintiff's motion to compel issuance of findings of fact and conclusions of law pursuant to the Court's decision on the allocation of parental rights and responsibilities; 3) Plaintiff's motion to preserve original jurisdiction over college expenses post-decree; 4) Plaintiff's motion to compel Defendant's submission of court ordered modifications to Defendant's shared parenting plan; 5) Plaintiff's motion and affidavit for declaratory judgement re: updated Civ. R.53; 6) Plaintiff's request for a decision regarding whether the Court will retain post-decree jurisdiction to modify provisions contained in the parties' Property Settlement Stipulations addressing designation of the dependency exemptions for the minor children for income tax purposes and life insurance on

the life of Defendant for the benefit of the children; and 7) Plaintiff's timely filed objections to the Magistrate's Decision with Findings of Fact and Conclusions of Law entered of record on August 27, 1998.

Plaintiff was present, pro se, during oral argument on the objections and motions; Defendant was present with his attorney, Mr. William Abernethy. A transcript of the proceedings before the Magistrate was filed with the Court. Plaintiff filed citations to the transcript in March, 1999 at which time the Court took all pending matters under submission for decision. Since this submission, Plaintiff has continued to file numerous motions. The Court is of the opinion that all matters were more appropriately addressed taken as a whole and thus issues its decision some months after the submission in March due to the motions subsequently filed by Plaintiff and the numerous contacts made by Plaintiff with Court personnel after March, 1999.

Based upon the record in this case, the applicable law and following oral argument on the objections, the Court's decision is as follows:

1) Motion to Vacate Magistrate's Decision

This motion is not well-taken and same is hereby overruled.

2) Motion for Findings of Fact and Conclusions of Law

The Court issued its findings of fact and conclusions of law on December 29, 1998. On page one of the decision, the Court sets out its understanding of the time frame within which the findings and conclusions of law were to be

issued. Plaintiff has also requested the Court remand to the Magistrate the issue of the allocation of private schooling expenses for the minor children. Said remand to include an order that the Magistrate consider the Court's findings of fact and conclusions of law entered of record on December 29, 1998 in determining the allocation of expenses. This request is hereby denied.

3) Motion to Preserve Original Jurisdiction over College Expenses Post-Decree

Plaintiff's request as set forth in this motion is hereby denied. Plaintiff has raised the issue of college expenses pursuant to the Court's original jurisdiction. The Court retains jurisdiction over the issue of the allocation of college expenses for the parties' children which may be incurred during their minority. Should Plaintiff file an appeal of the Court's decision denying her request to order an allocation between the parties for the college expenses of their children once they have attained the age of majority, the matter will be appropriately addressed by the Court of Appeals or the trial court upon remand.

4) Motion to Compel Defendant's Submission of Court Ordered Modifications to Shared Parenting Plan

On November 6, 1998, the Court issued its order pursuant to this motion. Defendant filed his proposed amended shared parenting plan on November 20, 1998 and Plaintiff filed her response thereto on January 4, 1999. The Court, by separate entry, attached hereto and incorporated herein, has addressed Defendant's proposed amended plan and Plaintiff's response thereto.

5) Motion and Affidavit for Declaratory Judgment re: Updated Civ. R. 53

This motion is not well-taken and same is hereby overruled to the extent that the Court is fully aware of the changes made to Civ. R. 53 referred to by Plaintiff in her motion. Unless there is apparent error on the face of the decision, the Court may adopt the Magistrate's decision without conducting an independent review prior to the filing of objections. Once objections are filed, the Court must then consider and rule on the objections.

6) Question of Court's Post-Decree Jurisdiction to Modify Designation of Dependency Exemptions and Defendant's Life Insurance for the Benefit of the Children.

The Court shall retain jurisdiction to enforce and/or modify those provisions relating to the designation of the dependency exemptions for the minor children. Ohio Revised Code Section 3113.21(C)(1)(e) provides that whenever a Court modifies, reviews, or otherwise reconsiders a child support order, it may reconsider which parent may claim the children who are the subject of the child support order as dependents for federal income tax purposes and shall issue its determination on this issue as part of the child support order.

The Court's jurisdiction over the issue of Defendant's life insurance for the benefit of the children is limited only to enforcement of the provisions as set forth in the Property Settlement Stipulations and Shared Parenting Plan. Although Defendant cites to Section 11.4 of the Property Stipulations as support for his position that the parties intended for the Court to retain jurisdiction to

modify the provisions relating to life insurance, this section refers to "disbursements" from the subtrust/account which would be created to hold the death benefit proceeds for the children. The Court also notes that the life insurance provisions apply beyond the children's minority. Defendant was correct in his statement that the Court cannot order him to maintain life insurance for the benefit of the children, however, once he agrees to do so, and said agreement is incorporated into the Decree of Divorce, the Court has the obligation and jurisdiction to enforce its orders. It does not follow, however, that the Court can modify the agreed life insurance provisions.

Plaintiff's argument that the Court may not retain jurisdiction to modify the dependency exemptions for the reason that the parties agreement on this issue is set forth in the Property Settlement Stipulations and, therefore, is a contractual matter between the parties is without merit. The Court has the power and authority to modify the dependency exemptions. Further, Plaintiff's argument that the Property Settlement Stipulations are not to be incorporated into the final judgment of decree of divorce is unsupported by the evidence and the Stipulations. Section 15.1 of the Stipulations states " . . . Husband and Wife agree to pay anticipating that the parties shall incorporate these Stipulations into a still-to-be executed Separation Agreement, if any, which in any event shall be further incorporated in a Divorce Decree to be filed in the Hamilton County Court of Common Pleas, Division of Domestic Relations."

Plaintiff's Objections

During oral argument on the objections, the Court admitted into evidence Plaintiff's Exhibits A, B, D, and E [sic (C)]. Additionally, the parties entered into agreed changes to the Magistrate's findings of fact and decision which changes are as follows:

1. Page 1, preamble to the findings of fact: It was agreed that Plaintiff would provide Defendant and the Court with language to replace that of "A hearing for the determination of all issues." The Court will accept Plaintiff's statement absent an error as to the matters properly before the Magistrate.

2. Page 1, #2: "The parties entered in a shared parenting plan," shall be changed to the Court, by decision and entry of May 23, 1997 determined that shared parenting would be in the best interest of the children.

3. Page 1, #2: The terms "life insurance" and "allocation of the tax dependency exemption of the minor children" are stricken from this paragraph.

4. Page 6, #9: This finding shall be stricken in its entirety.

5. Page 6, #10.d: Replace the language "their retirement benefits" with "Husband's retirement benefits".

6. Page 8, #11: Add to the Magistrate's finding that "The parties stipulated to the payment of court costs." the following: This stipulation addressed the payment of court costs through May 5, 1997 (see Property Settlement Stipulations, page 18, #15.1).

7. Page 10, #2: Change the term "residential parent and legal custodian" to "Mother".

8. Page 10, #3: Strike this paragraph in its entirety.

This concludes the parties agreed changes to the Magistrate's findings of fact and decision.

The Court now proceeds to address Plaintiff's remaining objections as follows:

1. Plaintiff objects to the Court's adoption of the Magistrate's decision prior to the filing of Plaintiff's objections. This objection is not well-taken and the same is hereby overruled.

2. Plaintiff objects that the Magistrate's decision violates the Court's order of reference and Civ. R. 53(C)(1)(c)(i-ii). This objection is not well-taken and same is hereby overruled. Civ. R. 53(C)(1)(b) states the order of reference may be specific to a particular case or may refer categories of motions or cases. The order of reference issued by the Court's administrate judge is a general order of reference. Said order is attached hereto and incorporated herein.

3. Plaintiff objects to the Court's premature adoption of the Magistrate's decision. This objection has been addressed by the Court above, i.e., the Court's adoption of the decision occurred prior to the filing of objections. With the filing of objections the decision and adoption of same were stayed pending a ruling on the objections.

4. Plaintiff objects that the Magistrate did not apply the correct subsection of Revised Code Section 3113.215 to this case in addressing the deviation factors for child support purposes for the reason the Magistrate found

"the parties entered into a shared parenting plan". This objection is not well-taken and same is hereby overruled. Ohio Revised Code Section 3113.215(B)(6)(a) applies to any shared parenting order issued by the Court pursuant to Section 3109.04 without regard to the subsection pursuant to which the plan is adopted and the Court's order of shared parenting is issued.

5. Plaintiff contends that the Court must find that the use of the child support guidelines is unjust and inappropriate to Mother and the children, or is an error of law, abuse of discretion, prejudicial to Mother and the children. Plaintiff also objects that the Magistrate did not correctly calculate Defendant's income. As noted, Plaintiff's exhibits A, B, D, and E [sic (C)] were admitted into evidence during oral argument on the objections. The Court finds that the Magistrate's calculation of Defendant's income is supported by the evidence.

In addressing the issue of child support, the Court hereby makes the following findings: The Magistrate's calculation of Defendant's income is supported by the weight of the evidence. However, the Court corrects the child support worksheet attached to the Magistrate's decision to reflect that both parents are residential parents and legal custodians of the minor children (see worksheet attached hereto and incorporated herein).

In *Weinberger vs Weinberger*, (May 15, 1998), Hamilton App. No. C-970552, unreported, the Court of Appeals for the First District held that in light of the Ohio Supreme Court's holding in *Pauly vs Pauly* (1997), 80 Ohio St.3d 386, that the exclusion of the residential parent's support from the child support order pursuant to R.C. 3113.215(C)

does not apply to shared parenting arrangements, it follows that both parents in a shared parenting arrangement should be ordered to pay support in accordance with the worksheet. The appellate court concluded that neither parent in a shared parenting arrangement is entitled to the Revised Code Section 3113.215 (C) presumption that his or her support obligation is spent on the children. Rather, both of their obligations must be included in the order. This holding was reaffirmed in *Congdon vs Congdon* (Nov. 13, 1998), Hamilton App. No. C-971002, unreported.

Therefore, this Court finds that Father is obligated to pay support in the amount of $11,993 and Mother is obligated to pay support in the amount of $4,089. However, to avoid the administrative processing fees associated with issuing two deduction orders (the parties would each be paying 2% poundage processing fee) which the Court determines would not be in the best interest of the children, the Court hereby offsets Mother's obligation against Father's obligation leaving a net payable yearly child support for the two minor children by Father of $7,904. The Court finds this amount unjust and inappropriate and not in the best interest of the children. In making this determination the Court considers the time allocation between the parties, the disparity in income, and the sharing of unreimbursed medical expenses and extracurricular activity expenses for the children as deviation factors sufficient to support this finding. The Court finds that the appropriate level of Father's support for the minor children, in consideration of these deviant factors is $15,000 per year or $7,500 per year, per child. A wage deduction order shall issue

accordingly. While the Court considered Mother's election to send the minor children to a private school and the expenses incurred by Mother as a result thereof, the Court finds Father's support obligation for the minor children should not be increased to accommodate Mother's election of schooling for the children.

6. Plaintiff objects that the Magistrate's decision contains error of law assuming continuing jurisdiction over contractual agreement representing property settlement of the parties. This objection is not well-taken and same is hereby overruled.

7. Plaintiff objects that the Court errs in dismissing issues of state and federal constitutional claims raised by Plaintiff in her closing argument. This objection is not well taken and same is hereby overruled. The Court declines to affirm Plaintiff's assertion with regard to her constitutional claims.

8. Plaintiff object [sic] to the Magistrate's decision as it relates to spousal support. This objection is not well-taken and same is hereby overruled.

All other objections of Plaintiff are found to be not well-taken and same are hereby overruled.

Except as otherwise set forth herein or as set forth in other decisions, orders, entries, etc of this Court, the Court adopts the Magistrate's decision with findings of fact and conclusions of law.

IT IS ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

BEST AVAILABLE COPY

Worksheet
Hamilton County Domestic Relations Court
Child Support Computation
Sole Residential Parent or Shared Parenting Order

Name of Parties: BARDES/TODD
Case No. A /DR DR9402798

Mother has _____ pay periods/yr
Father has 12 pay periods/yr

Number of minor children : 2

		COLUMN I FATHER	COLUMN II MOTHER	COLUMN III COMBINED
1.a	Annual gross income from employment OR, when determined appropriate by the court or agency, average annual gross income from employment over a reasonable period of years (exclude overtime and bonuses.....	$50,000	$10,920	
1.b	Amount of overtime and bonuses:			
	FATHER: YR 3 $	$0		
	YR 2 $	$0		
	YR 1 $	$0		
	AVERAGE	$0		
	MOTHER: YR 3 $		$0	
	YR 2 $		$0	
	YR 1 $		$0	
	AVERAGE		$0	
	Lesser of 3 year average or year 1	$0	$0	
	(Include in Column I and/or Column II the average of the three years or the year 1 amount, whichever is less, IF THERE EXISTS A REASONABLE EXPECTATION THAT THE TOTAL EARNINGS FROM OVERTIME AND/OR BONUSES DURING THE CURRENT CALENDAR YEAR WILL MEET OR EXCEED THE AMOUNT THAT IS THE LOWER OF THE AVERAGE OF THE THREE YEARS OR THE YEAR 1 AMOUNT. IF, HOWEVER, THERE EXISTS A REASONABLE EXPECTATION THAT THE TOTAL EARNINGS FROM OVERTIME/BONUSES DURING THE CURRENT CALENDAR YEAR WILL BE LESS THAN THE LOWER OF THE AVERAGE OF THE THREE YEARS OR THE YEAR 1 AMOUNT, INCLUDE ONLY THE AMOUNT REASONABLY EXPECTED TO BE EARNED THIS YEAR.).....	$50,000	$10,920	
2	Annual income from interest and dividends (whether or not taxable).....	$1,926	$11,129	
3	Annual income from unemployment compensation.....	$0	$0	
4	Annual income from workers' compensation or disability insurance	$0	$0	
5	Other annual income (identify).....	$23,791	$0	
6	Total annual gross income (add lines 1-5).....	$75,717	$22,049	
7	Annual court-ordered support paid for other children.....	$0	$0	
8	Adjustment for minor children born to either parent and another parent, which children are living with this parent (number of children — times federal income tax exemption less child support received for the year, not to exceed the federal tax exemption).....	$0	$0	
9	Annual court-ordered spousal support paid to a former spouse..	$0	$0	
10	Amount of local income taxes actually paid or estimated to be	$1,550	$0	
11	For self-employed individuals, deduct 5.6% of adjusted gross income or the actual marginal difference between the actual rate paid by the self-employed individual and the F.I.C.A. rate.....	$0	$0	
12	For self-employed individuals, deduct ordinary and necessary business expenses.....	$0	$0	
13	Total gross income adjustments (add lines 7-12).....	$1,550	$0	
14	Adjusted annual gross income (subtract line 13 from 6).....	$74,167	$22,049	
15	Combined annual income that is basis for child support order (add line 14, Col. I and Col. II).....			$96,216
16	Percentage of parent's income to total income:			
	a. Father (divide line 14, Col. I by line 15, Col. III).....	77.08%		
	b. Mother (divide line 14, Col. II by line 15, Col. III).....		22.92%	= 100%

App. 151

38

	COLUMN I FATHER	COLUMN II MOTHER	COLUMN III COMBINED
17 Basic combined child support obligation (Refer to basic child support schedule in division (D) of section 3113.215 of the Revised Code; in the first column of the schedule, locate the sum that is nearest to the combined annual income listed in line 15, Col. III of this worksheet, then refer to the column of the schedule that corresponds to the number of children in this family. If the income of the parents is more than one sum and less than another sum in the first column of the schedule, you may calculate the basic combined child support obligation based upon the obligation for those two sums.)			# 16,082
18 Annual child care expenses that are work, employment training, or education related, as approved by the court or agency (deduct the tax credit from annual cost, whether or not claimed)	$575	$0	
19 Marginal, out-of-pocket costs, necessary to provide for health insurance for the children who are the subject of this order	$1,301	$0	
20 Total child care and medical expenses (Add lines 18 and 19, Col. I and II)	$1,761	$0	
21 Combined annual child support obligation for this family (Add lines 17 and 20, Col. I and II)			$17,843
22 Annual support obligation/parent: a. Father (multiply line 21, Col. III, by line 16a)	$13,754		
b. Mother (multiply line 21, Col. III, by line 16b)		$4,089	
23 Adjustment for actual expenses paid for annual child care expenses and marginal, out-of-pocket costs, necessary to provide for health insurance (enter number from line 18 or 19 if applicable)	$1,761	$0	
24 Actual annual obligation (Subtract line 23 from Line 22a or 22b	$11,993	$4,089	
25 Gross household income per party after exchange of child support (add lines 14 and 24, Col. I or II for residential parent or, in the case of shared parenting order, the parent to whom child support will be paid; subtract line 24 Col. I or II from line 14 for parent who is not the residential parent or, in the case of shared parenting order, the parent who will pay child support)	$62,174	$34,042	
26 Comments, rebuttal, or adjustments to correct figures in lines 24, Col. I and 24, Col. II if they would be unjust or inappropriate and would not be in best interest of the child or children (specific facts to support adjustments must be included) See Court's decision on objections, page 7.	$15,000	-	

27 Final figure (this amount reflects final annual child support obligation) ..... Father is Obligor $15,000

28 For Decree: child support per month per child (divide obligor's annual share, line 27, by 12 and by number of children) $625.00

29 For deduction order: child support per pay period (calculate support per pay period from figure on line 28) plus appropriate processing charge $1275.00

Calculations have been reviewed.

Signatures:

_____

Father - (I do/do not consent)

Sworn to before me and subscribed in my presence this ____day of _____, 19____

_____

Notary Public

_____

Mother - (I do/do not consent)

Sworn to before me and subscribed in my presence this ____day of _____, 19____

_____

Notary Public

_____ _____

Attorney for Father Attorney for Mother

(T.d. 314, page 11)

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

ENTRY

GENERAL ORDER OF REFERENCE

JULY 1, 1995
(Filed Aug. 23, 1995, image 9)

(ENTERED SEPT. 2, 1999)

The parties in causes heard in the Court of Domestic Relations, not being by the Constitution entitled to a trial by jury, and it appearing to be for the best interests of the parties that all matters be referred to a Magistrate of this Court:

It is therefore ordered by the Court that effective July 1, 1995 all matters be and are hereby referred to a Magistrate in accordance with Rule 53 of the Ohio Rules of Civil Procedure. Said Magistrates shall continue to exercise all power otherwise delegated to the Magistrate (previously known as referee) by rule, statute or the Constitutions of the United States of America and the State of Ohio. However, the authority to execute restraining orders without notice shall be reserved to a Judge. A Magistrate may issue restraining orders when legal notice is provided to the other party and also may issue

restraining orders when proper pursuant to O.R.C. 3113.31 ff (Domestic Violence.

/s/ Ronald A. Panioto
Ronald A. Panioto
Administrative Judge

/s/ Deborah K. Gaines
Deborah K. Gaines
Judge

/s/ Patrick T. Dinkelacker
Patrick T. Dinkelacker
Judge

T.d. 313

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES Plaintiff -vs- SAMUEL P. TODD, III Defendant	Case No. DR9402798 File No. E-194749 Judge Cunningham **DECISION – PLAINTIFF'S MOTIONS OF JULY 24 AND 26, 1999**

(FILED SEP. 1, 1999)

The above captioned matter came before the Court pursuant to motions filed by Plaintiff on July 24 and 26, 1999. The Court, by entry of July 28, 1999, decided to rule upon the motions without oral hearing. Defendant filed his response to the motions on August 2, 1999 followed by Plaintiff's reply filed on August 9, 1999.

Upon review and consideration of the motions and based upon the record in this matter, the Court decides as follows:

1. **Motion for Access to All Financial Records of Children**

This motion is not well-taken and same is hereby denied.

2. Motion to Facilitate Appellate Review I

This motion is not well-taken and same is hereby denied.

3. Motion to Facilitate Appellate Review II

This motion is well-taken and same is hereby granted. The Court, by separate entry, a copy of which is attached hereto and incorporated herein, directs that all future orders issued in the above captioned matter shall be captioned using Plaintiff's name of Dee Ellen Garrison Bardes.

4. Motion to Compel Submission of Addendum to Property Settlement Stipulations

The Addendum to the Property Settlement Stipulations was filed by Defendant on August 23, 1999.

5. Second Motion for Issuance of Civ. R. 54(B) Final Appealable Order or in the Alternative Motion for Adequate Remedy at Law

These motions are not well-taken and same are hereby denied.

6. Motion to Correct Errors in Interlocutory Decision on Allocation of College Expenses

The Court hereby makes changes to its decision on the allocation of college expenses entered of record on April 30, 1999 as follows:

1) Mother's name is Dee Ellen Garrison Bardes

2) The parties' social security numbers and dates of birth shall be eliminated from the caption heading.

3) The names of the parties' children are Samuel Pogue Todd IV and Garrison Bardes Todd.

4) Garrison Bardes Todd's date of birth is September 26, 1991.

5) The Court finds that a normal progression of school attendance indicates that if Garrison Bardes Todd attends college he would commence attendance at age seventeen. The Court finds that a normal progression of school attendance indicates that if Samuel Pogue Todd IV attends college he would commence attendance at age eighteen.

6) The Court hereby strikes the term "and property division" found on Page 1 of the decision as it relates to "a full evidentiary hearing before the Magistrate".

Except as set forth herein in #1 through #6 directly above, the Court declines to make the changes addressed by Plaintiff in her motion to correct errors.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES

Plaintiff

-vs-

SAMUEL POGUE TODD III

Defendant

Case No: DR9402798

File No: E194749

Judge Cunningham

ENTRY ORDER

(ENTERED SEPT. 01, 1999)

It appearing to the Court that the Probate Court of Hamilton County, Ohio has issued an Order Changing Name, in Case #C96656, In Re: D'Ellen Bardes Todd, effective 1/17/97, the Court hereby orders the following:

> All future orders issued in the above captioned case number shall be captioned using the Plaintiff's new name, Dee Ellen Garrison Bardes, rather than her former names, D'Ellen Bardes a/k/a D'Ellen Bardes Todd.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

T.d. 312

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES	:	Case No. DR9402798
Plaintiff	:	File No. E-194749-0-7
-vs-	:	Judge Cunningham
SAMUEL P. TODD III	:	**DECISION**
Defendant	:	

(ENTERED SEP. 01, 1999)

The above captioned matter came before the Court without oral hearing pursuant to Plaintiff's motions filed on August 17, 1999.

The Court hereby decides and rules as follows:

1. ***Motion to Update Personal and S Corporation Income***

This motion is not well-taken and same is hereby denied.

2. ***Motion to Intercept and Seize Father's Annual Tax Refunds for Gifted Children's Education***

This motion is not well-taken and same is hereby denied.

3. ***Motion to Compel Father's 1120S 1998 Tax Return***

This motion is not well-taken and same is hereby denied.

4. ***Motion to Ensure Newly Filed "Duplicate" Transcripts Paginated Same as Ones Sold to Mother***

Upon conferring with the assigned Court Reporter, the Court addressed this matter by separate entry, a copy of which is attached hereto and incorporated herein.

The Court also notes that Plaintiff complained that she was denied access to court records in this case. Attached is a response from Mr. Timothy Meyer, Assistant Chief Deputy, Hamilton County Clerk of Courts, regarding this matter.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

(T.d. 312, page 3)

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'ELLEN BARDES,
PLAINTIFF

VS. CASE NO. DR-9402798

SAMUEL P. TODD,
DEFENDANT

ORDER

(ENTERED AUG 19 1999)

It appearing to the Court that the amended Index to the Transcript of Proceedings dated December 4, 1998 was incorrectly numbered as Page 3, it shall herein after be replaced with the Index as attached and correctly numbered 2(A).

SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham, Judge
August 19, 1999

INDEX

PLAINTIFF'S EXHIBITS:

A Deft. '97 income tax return 17

B Plt. '97 income tax return 17

C Plt's worksheet 17

D Information on private school..... 18

E Magistrate's notes..... 18

A through D Admitted, Page 20

E Not Admitted, Page 21

(T.d. 312, pages 4-5)

(ENTERED SEPT. 1, 1999, image 87-88)

[SEAL]

JAMES C. CISSELL
HAMILTON COUNTY CLERK OF COURTS

August 18, 1999

Judge Penelope R. Cunningham
Court of Domestic Relations
800 Broadway
Cincinnati, Ohio 45202

Dear Judge Cunningham:

It has come to my attention that a motion has been filed in the Domestic Relations Court by Ms. D'Ellen Bardes (DR9402798) indicating that she was denied access to the above mentioned case file. First, allow me to state the policy of the Clerk of Courts regarding requests to view legal case files.

All filings accepted by the Clerk of Courts are time-stamped, docketed in the computer, scanned and then loaded on the Internet. Upon acceptance by the clerk all filings immediately become "open" to the general public for viewing. A person can perform any one of the following procedures in order to view a legal case file: 1.) Enter the clerks office at 800 Broadway, Room 213 and sign out any case file. The clerk provides a viewing area and copy machines for the convenience of the general public. 2.) Enter the clerks office at 800 Broadway, Room 213 and utilize in-house general public computers to view "scanned" documents. These documents can be viewed free of charge or copied for a nominal fee. 3.) Enter the

clerks office at 800 Broadway, Room 213 and view documents that have been micro-filmed. 4.) All individuals have access to all filings by utilizing the Hamilton County Clerk of Courts Web-Site on the Internet. The Clerk of Courts does not deny access of any document unless a Court Order has been issued sealing a particular document or case file.

During late July or early August Ms. Bardes requested to see her case file and the Family File. For the sake of convenience extended to Ms. Bardes the clerks office released her entire legal file to Mr. Brian Deyo (Family File employee) who then set up a viewing area in the Family File Office. Ms. Bardes began her viewing of the case files which covered a period of several days. Ms. Bardes continued to view the files on Friday, August 6, 1999 and at closing time (4:00 p.m.) Family File Supervisor Mr. Rick Plagge informed Ms. Bardes that a viewing area would be set up on Monday, August 9, 1999 for Ms. Bardes to continue her viewing of the case. On Monday, August 9, 1999 Judge Cunningham of the Domestic Relations Court requested all files relating to case DR9402798 for court preparations. Mr. Plagge was not aware that the court would be requesting use of that particular case when he informed Ms. Bardes that he would set up a viewing area on Monday, August 9, 1999.

When Ms. Bardes arrived on Monday, August 9, 1999 at approximately 11:00 a.m. the files were already in the possession of Judge Cunningham who was reviewing the case for court preparation. It was indicated to Ms. Bardes by Judge Cunningham's office personnel that the court would provide any particular document that she wished to view while the court was utilizing the case file. Ms.

Bardes did not specify any particular document that she wished to view. It was indicated to Ms. Bardes by Judge Cunningham's office personnel that the entire case file would be available to her when the case was returned to the Clerks Office.

It should also be noted that throughout the course of this on-going case that Ms. Bardes has on numerous occasions entered the Clerks Office to review documents previously filed in regard to this case. The Clerks Office has assisted Ms. Bardes with a spirit of cooperation by making the files immediately available, provided a viewing station and answered all questions.

In light of all the options that were available to Ms. Bardes and the cooperation extended by the Court, I feel that her accusations are unfounded.

Sincerely,

/s/ Timothy N. Meyer
Timothy N. Meyer
Assistant Chief Deputy
Hamilton County Clerk of Courts
Domestic Relations Division

T.d. 311

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES	:	Case No. 9402798
	:	File No. E-194749-0-7
Plaintiff	:	Judge Cunningham
-vs-	:	**DECISION DENYING**
SAMUEL P. TODD, III	:	**MOTION**
	:	
Defendant	:	

(FILED SEPT. 1, 1999)

The above captioned matter came before the Court pursuant to Plaintiff's Motion to Determine State Laws as Applied by Lower Court, etc. filed August 6, 1999. On August 20, 1999 Plaintiff filed a Supplement to said motion.

The Court hereby decides and rules as follows:

This motion is not well-taken and same is hereby denied.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

T.d. 310

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES Plaintiff	:	Case No. DR9402798 File No. E-E194749
-vs-	:	
SAMUEL P. TODD III Defendant	:	Judge Cunningham **COURT REQUESTED CHANGES TO FATHER'S PROPOSED AMENDED SHARED PARENTING PLAN OF NOVEMBER 20, 1998**

(ENTERED SEP. 01, 1999)

Upon review of Father's Proposed Amended Shared Parenting Plan filed on November 20, 1998 in the above captioned matter and in consideration of Plaintiff's response to said Plan filed on January 4, 1999, the Court hereby requests that Defendant make the following changes to said Plan. Upon compliance with this request, the Court will adopt Father's Shared Parenting Plan.

1. Page 1: Change the reference to the Revised Code to Section 3109.04(d)(1)(a)(iii).

2. As the Plan is not one being jointly submitted, all provisions which include the statement "the parties agree" shall be eliminated unless the provision references

a document, stipulation, etc. to support the statement "the parties agree".

3. Page 13: Provision 9.2: Insert as the last sentence in this section the following: The children currently attend The Summit Country Day School, Hyde Park, Cincinnati.

4. Pages 14 & 15: Eliminate provisions 9.3, 10.1, 10.1.1, 10.2, and 10.5 The remaining provisions of Section 10 shall be renumbered accordingly.

5. Page 20: Eliminate provision 13 – Father's Family Trusts unless the parties should agree in writing to the inclusion of same in the Shared Parenting Plan. These trusts have been addressed by the parties pursuant to the Property Settlement Stipulations entered of record on May 6, 1997.

6. Page 22: Provision 16.1: Replace the first sentence with the following: The Hamilton County Court of Common Pleas, Division of Domestic Relations shall retain continuing jurisdiction to modify any and all issues relating to the minor children as set forth herein, except Provision 12 – Life Insurance. Insert as the second sentence to this provision the following: Jurisdiction over the issue of life insurance is limited to enforcement of said provision.

Defendant shall have seven days from journalization of this entry to make the changes, as set forth above, to his Shared Parenting Plan and submit same to the Court.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

T.d. 285

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'ELLEN BARDES	:	Case No. DR9402798
Plaintiff	:	File No. E-194749-0-7
-vs-	:	
SAMUEL P. TODD III	:	Judge Cunningham
Defendant	:	**DECISION**

(ENTERED APR. 30, 1999)

The above captioned matter came before the Court pursuant to Plaintiff's Motion for Summary Judgment and alternative motions filed on January 29, 1999. Defendant filed his response on February 5, 1999 followed by Plaintiff's reply memorandum filed on February 11, 1999.

The Court finds Plaintiff's motions are not well-taken and same are hereby overruled.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

T.d. 284

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'ELLEN BARDES	:	Case No. DR9402798
Plaintiff	:	File No. E-194749-0-7
-vs-	:	
SAMUEL P. TODD III	:	Judge Cunningham
Defendant	:	**DECISION**

(ENTERED APR. 30, 1999)

The above captioned matter came before the Court pursuant to Plaintiff's motion for issuance of a Civ. R. 54(B) final appealable order and motion for certification of class of litigants known as "Ohio Mothers" pursuant to Civ. R. 23(C)(4)(A). Said motions having been filed by the Plaintiff on March 29, 1999. On April 7, 1999 Defendant filed a motion to dismiss Plaintiff's motions. On April 15, 1999, Plaintiff filed a motion to dismiss Defendant's motion or in the alternative a motion to strike.

The Court finds Plaintiff's motions are not well-taken and same are hereby denied.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

T.d. 283

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'Ellen Bardes
SS#: 270-52-9846
DOB:

Case No.: DR9402798
File No.: E194749
CSEA

Plaintiff

-vs-

Samuel Pogue Todd, III
SS# 293-56-1656
DOB: 01/04/54

Defendant

DECISION ON ALLOCATION OF COLLEGE EXPENSES

JUDGE CUNNINGHAM

(FILED APR. 30, 1999)

The above captioned matter came before the Court pursuant to Plaintiff's motion and request for an order allocating anticipated college expenses for the parties [sic] minor children, Samuel Todd, born February 19, 1990 and Garrison Todd, born September 20, [sic] 1991. Additionally, Plaintiff by motion filed February 1, 1999 requested an evidentiary hearing on this issue and by separate motion filed that same date requested findings of fact and conclusions of law. Defendant, on February 5, 1999 filed his response to said motions. The Court had previously informed Mr. Abernethy, attorney for Defendant, and Ms. Bardes that the Court would not proceed with an evidentiary hearing on the matter but would allow for oral argument on the law. Plaintiff's request for an evidentiary hearing on the issue of an allocation of college expenses was denied in part as there had already

been a full evidentiary hearing before the Magistrate on, inter alia, child support, allocation of private school tuition, spousal support, and property division. The evidentiary record on those issues was sufficient for application to the issue of college expenses. (The Magistrate issued his decision with findings of fact and conclusion of law.) Further, the Court was of the opinion that the law was well settled in Ohio as to allocation of college expenses but, of course, Plaintiff was entitled to argue otherwise.

Both parties filed written memoranda on the law and proceeded with oral argument before the Court. Plaintiff's request for findings of fact is hereby denied as the proceedings before the Court was one only of oral argument on the law.

The question before the Court is whether the Court can order the divorcing parents of a child(ren) who is currently a minor(s) to pay for said child's college expenses after the child(ren) reaches the age of majority absent an agreement between the parents to do so and adoption of the agreement by the Court.

Pursuant R.C. 3105.21, a child is to be supported until the child reaches the age of majority. Support is to be extended beyond the age of majority as long as the child attends an accredited high school. Once the child reaches the age of 19 years, support is to be terminated, even if the child is attending an accredited high school. There is currently no statutory obligation for a parent to provide for their children after the age of majority once the child is out of high school (or reaches the age of 19). Ohio Courts have refused to expand a parent's obligation to

support a child beyond emancipation. *Thiessen v. Moore* (1922) 105 Ohio St. 401. *Miller v. Miller* (1951), 154 Ohio St. 530.

In *Thiessen v. Moore* 105 Ohio St. 401, the trial court ordered defendant to "convey by good and sufficient deed the real estate above described [being two acres plus] to plaintiff for her natural life and the fee of said real estate to said children absolutely . . . " *Id.* at 420. The Court of Appeals found the language in the decree which conveyed the property to his children to be valid. The Supreme Court of Ohio reversed the Court of Appeals as to the two acre parcel of land which was conveyed to defendant's children. The Court decided that a parent has no duty to provide for a child past the age of majority. *Id.* at 421.

> The legislature having imposed no obligation upon the parent beyond the majority of the children, the court was without power to create such obligation, was without power to do other than provide for the maintenance, care, education and custody of the children during minority and was without power to make any order with reference to the children which was not for the purpose of maintenance, care custody and control during minority. *Id.* at 422.

Miller v. Miller 154 Ohio St. 530 followed the decision in *Thiessen v. Moore*. In the Miller case, the Plaintiff had obtained life insurance policies naming his children as beneficiaries. During the divorce action, the trial court permanently enjoined and restrained Plaintiff from changing the life insurance beneficiaries or letting the policies lapse. The Court of Appeals reversed the trial

court and decided that the clause referencing the insurance policies was void and that the emancipated children had no interest in the insurance policies. The Supreme Court of Ohio affirmed the Court of Appeals and decided that a trial court does not have the power to order support for a minor child beyond the child's emancipation. "[T]he court has no authority to award children support after they become of age, and the court's authority to provide in any way for the children ceases when they reach their majority" *Id.* at 538.

The Miller position has been followed in the Hamilton County Court of Appeals. In *Sylvester v. Sylvester* (1969) 21 Ohio App. 2d 58, the trial court ordered child support "until either child is emancipated by age of twenty-one (21) or until graduated from college, whichever occurs later." Id. at 58. (In 1969, the age of emancipation was 21.) Citing to *Miller v. Miller, supra,* the Court of Appeals decided that "in a divorce action, where a child of the parties attains his majority, authority of the court over such child comes to an end, and the court is without power to provide for the support of or aid to such child or to continue a provision for his support." *Id.* at 58-59. The Court of appeals struck the language "or until graduated from college, whichever occurs later" and inserted the language "or is otherwise emancipated."

In *Verplatse v. Verplatse* (1984) 17 Ohio App. 3d 99, the trial court in a divorce action ordered "that defendant, Albert A. Verplatse, shall pay the board, room and tuition of any of said children, regardless of whether or not the child has attained the age of eighteen (18) years, should the child continue his or her education in any kind of institution of higher learning beyond the twelfth (12th)

grade of high school." *Id.* at 101. The Court of Appeals reversed the trial court's decision ordering defendant to pay college tuition, room and board for any child which has attained the age of eighteen. The court found that the order of payment of the college tuition, room and board was a provision of support. Id. at 103. Citing *Miller v. Miller, supra,* the court reiterated that a trial court does not have the power to order a parent to provide support for an emancipated child. *Id.* at 101.

In *Russo v. Russo* 1998 Ohio App. LEXIS 1293, the Court of Appeals upheld the position that a parent is not required to pay college expenses for an emancipated child. The court refused to make an unequal division of marital property in order to provide one parent with the financial ability to help with the children's college expenses. "[N]o statutory authority exists to order marital property to be expended for the benefit of a child who is not a party to the proceedings." *Id.*

In *Pratt v. McCullough* (1995), 100 Ohio App.3d 479, the Twelfth District Court of Appeals overturned the trial court's order requiring Father to maintain a trust fund for the child's college education. The Court noted that it had previously ruled that a domestic relations court does not have the authority to order an obligor to set money aside for a child's college education unless the parties specifically agreed to such an arrangement in the separation agreement.

In the case at bar, the parties are not in agreement regarding payment of college expenses for their minor children. Ohio courts consider payment of college tuition and expenses to be in the nature of support.

There is no statutory obligation for parents to fund their adult children's college education. In a divorce action the parties, however, are free to enter into an agreement to do so. Absent such an agreement adopted by the Court, the Court has no authority to order divorcing parents to support their adult children unless it is shown that they are incapable of their own support due to disability.

Plaintiff's motion and request that the Court order the parties to pay for the college tuition and expenses of their children after they attain the age of majority is hereby denied.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

Copies sent by Clerk of Courts to:

D'Ellen Bardes, PRO SE

William S. Abernethy Jr. Esquire, Attorney For Defendant

(2)

01 398 AUG 31 2001

No. _____

In The

Supreme Court of the United States

DEE ELLEN GARRISON BARDES,

Petitioner,

vs.

SAMUEL POGUE TODD III,

Respondent.

On Petition For Writ Of Certiorari
To The Court Of Appeals
For The State Of Ohio,
First Appellate District Of Ohio,
Hamilton County

APPENDIX TO PETITION FOR WRIT OF CERTIORARI VOLUME II, PAGES 176 TO 442

DEE ELLEN G. BARDES
Petitioner, pro se
1035 Paxton Ave.
Cincinnati, OH 45208-2828
513/871-4959
No fax available

TABLE OF CONTENTS

Page

VOLUME I

APPENDIX A, First District's Orders

Merits:

Opinion, Court of Appeals, First Appellate District of Ohio, Filed October 13, 2000 .....App. 1

Judgment, Court of Appeals, First Appellate District of Ohio, Filed October 13, 2000 .....App. 12

Entry Overruling Motion to Certify Conflict, Overruling Application for Reconsideration, Overruling Motion to Stay, and Striking Filing, Court of Appeals, First Appellate District of Ohio, Filed November 3, 2000 .....App. 13

Entry Overruling Motion for Stay and Application for Reconsideration, Court of Appeals, First Appellate District of Ohio, Entered December 1, 2000 .....App. 15

Entry Overruling Motion to Compel Clerks to Redact Private Data Prior to Scanning or Availing Public Access, or in the Alternative Not to Scan Documents Containing Private Data, or in the Alternative to Seal Appendix to Brief, Entered June 2, 2000 .....App. 15a

Certificate:

Entry Striking Filing of May 29, 2001, Entered June 15, 2001..... App. 15b

Entry Overruling Motion to Certify, Court of Appeals, First Appellate District of Ohio, Entered March 24, 2000.....App. 327

TABLE OF CONTENTS – Continued

Page

Entry Striking Filing of May 29, 2001, Court of Appeals, First Appellate District of Ohio, Entered June 15, 2001 .....App. 328

Entry Overruling Motion to Reconsider, Court of Appeals, First Appellate District of Ohio, Entered July 13, 2001.....App. 329

Entry Striking Filing of July 24, 2001, Court of Appeals, First Appellate District of Ohio, Entered August 10, 2001.....App. 330

Entry of Dismissal, **C-010498**, Court of Appeals, First Appellate District, Entered August 17, 2001 .....App. 334

APPENDIX B, Domestic Relations Orders

Certificate:

Order Dismissing Motion to Strike, Court of Common Pleas, Division of Domestic Relations, Entered July 24, 2001.....App. 331

Order Dismissing Plaintiff/Appellant/Petitioner's Motion Invoking Limited Jurisdiction & Motion for Findings of Fact on Federal Claims, Court of Common Pleas, Division of Domestic Relations, Hamilton County, Ohio, Entered July 24, 2001.....App. 332

Order for Submission and Determination Without Oral Hearing, Court of Common Pleas, Division of Domestic Relations, Hamilton County, Ohio, Entered June 4, 2001 .....App. 333

TABLE OF CONTENTS – Continued

Page

Merits:

T.d. 345, Decision, Court of Common Pleas, Division of Domestic Relations, Entered January 26, 2000 .....App. 16

Filing Regarding Plaintiff's Emergency Motion Filed on January 24, 2000, Court of Common Pleas, Division of Domestic Relations, Entered January 26, 2000.....App. 18

T.d. 342, Final Decree of Shared Parenting, Court of Common Pleas, Division of Domestic Relations, Entered December 30, 1999 .....App. 20

Exhibit C, Amended Shared Parenting Plan, Court of Common Pleas, Division of Domestic Relations, Filed September 16, 1999 .....App. 22

Mother is court ordered sole decision maker on children's educational issues..... App. 39, #9.2

Exhibit D, Entry Adopting Father's Proposed Second Amended Shared Parenting Plan, Court of Common Pleas, Division of Domestic Relations, Filed September 22, 1999 .....App. 54

QMCSO, T.d. 342, O.R.C. §3113.215(B)(5)(f)/ 3113.217, Standing Order Allocating Extraordinary Expenses (App. 407).....App. 57

T.d. 341, Judgment Entry Decree of Divorce, Court of Common Pleas, Division of Domestic Relations, Entered December 30, 1999 .....App. 67

Exhibit A, Property Settlement Stipulations, Court of Common Pleas, Division of Domestic Relations, Filed May 6, 1997.....App. 74

TABLE OF CONTENTS – Continued

Page

Exhibit B, Addendum to Property Settlement Stipulations, Court of Common Pleas, Division of Domestic Relations, Filed August 23, 1999 ..... App. 117

Exhibit C, Stipulations: Father's Trusts' Expert Witnesses & Testimony, & Post Trial Proffers, Court of Common Pleas, Division of Domestic Relations, Filed July 29, 1997 ..... App. 120

T.d. 340, Entry, Court of Common Pleas, Division of Domestic Relations, Entered December 30, 1999 ..... App. 126

T.d. 331, Addendum to Decision on Objections, Court of Common Pleas, Division of Domestic Relations, Entered November 29, 1999 ..... App. 127

T.d. 330, Decision, Court of Common Pleas, Division of Domestic Relations, Filed November 17, 1999 ..... App. 130

T.d. 325, Decision on Motion to Set Aside an Objection to 9/1/99 Findings, Court of Common Pleas, Division of Domestic Relations, Filed November 1, 1999 ..... App. 132

T.d. 324, Decision Granting Motion to Set Merits Hearing, Court of Common Pleas, Division of Domestic Relations, Entered November 1, 1999 ..... App. 134

T.d. 319, Order for Submission and Determination Without Oral Hearing of Defendant's Motion to Set Merits Hearing, Court of Common Pleas, Division of Domestic Relations, Entered September 22, 1999 ..... App. 135

TABLE OF CONTENTS – Continued

Page

T.d. 318, Entry Adopting Father's Proposed Second Amended Shared Parenting Plan, Court of Common Pleas, Division of Domestic Relations, Filed September 22, 1999 .....App. 136

T.d. 317, Motion to Set Merits Hearing, Court of Common Pleas, Division of Domestic Relations, Filed September 21, 1999 .....App. 137

T.d. 315, Correction to Decision and Orders Entered of Record September 1, 1999, Court of Common Pleas, Division of Domestic Relations, Entered September 3, 1999.....App. 139

T.d. 314, Decision and Orders, Court of Common Pleas, Division of Domestic Relations, Entered September 1, 1999 .....App. 141

Decision *against Mother's federal constitutional claims* raised in closing argument (T.d. 193, 3/18/98 which includes written closing arg, plus five binders of cases docketed together), overruling obj. with preservation of federal constitutional violations (T.d. 202, 9/9/98 with three binders (all filled with constitutional claims fully argued) *timely filed*, but belatedly docketed, T.d. 345, 346, 347).....App. 150, #7

Holding, Civ. R. 53's (App. 372) compulsory requirement compels court *to rule on objections* generating reviewable orders on all obj. (T.d. 193) (Civ. R. 7 (App. 367) procedural defect not *adequate*) .....App. 144, #5

Entry, Court of Common Pleas, Division of Domestic Relations, Filed August 23, 1995 .....App. 153

TABLE OF CONTENTS – Continued

Page

T.d. 313, Decision – Plaintiff's Motions of July 24 and 26, 1999, Court of Common Pleas, Division of Domestic Relations, Filed September 1, 1999 .....App. 155

Entry Order, Court of Common Pleas, Division of Domestic Relations, Entered September 1, 1999 .....App. 158

T.d. 312, Decision, Court of Common Pleas, Division of Domestic Relations, Entered September 1, 1999 .....App. 159

Order, Court of Common Pleas, Division of Domestic Relations, Entered August 19, 1999 .....App. 160

T.d. 311, Decision Denying Motion *deciding against federal claims* for Preemption, Supremacy, Vagueness, FFCCSOA, et al. (mot., T.d. 303), Court of Common Pleas, Division of Domestic Relations, Filed September 1, 1999.....App. 165

T.d. 310, Court Requested Changes to Father's Proposed Amended Shared Parenting Plan of November 20, 1998, Court of Common Pleas, Division of Domestic Relations, Entered September 1, 1999 .....App. 166

T.d. 285, Decision Denying Motion for Summary Judgment *deciding in favor of* Father's federal Equal Protection Legislative Classification defense (married parents can't be ordered to pay educational and college support, so parents splitting up can't be ordered to pay) (mot, T.d. 228, 250, 254, 257, 1/29/99; memo, T.d. 257, 2/1/99, p. 2, #1; et al.), Court of Common Pleas, Division of Domestic Relations, Entered April 30, 1999 .....App. 168

TABLE OF CONTENTS – Continued

Page

T.d. 284, Decision, denying certification of class action, Court of Common Pleas, Division of Domestic Relations, Entered April 30, 1999. .App. 169

T.d. 283, Decision on Allocation of College Expenses, Court of Common Pleas, Division of Domestic Relations, Filed April 30, 1999 ....App. 170

VOLUME II

T.d. 233, Findings of Fact and Conclusions of Law, Court of Common Pleas, Division of Domestic Relations, Entered December 29, 1998.....App. 176

Stipulations, Court of Common Pleas, Division of Domestic Relations .....App. 189

Stipulations Exhibit A: Shared Time Schedule, Court of Common Pleas, Division of Domestic Relations .....App. 192

Stipulations Exhibit B: Summary of Father's Mental/Psychological History, Court of Common Pleas, Division of Domestic Relations .....App. 208

T.d. 201, Magistrate's Decision with Findings of Fact and Conclusions of Law, Court of Common Pleas, Division of Domestic Relations, Entered August 29, 1998 .....App. 231

T.d. 189, Entry, Court of Common Pleas, Division of Domestic Relations .....App. 250

T.d. 149, Magistrate's Order of Common Pleas, Division of Domestic Relations, Filed July 17, 1997 .....App. 252

TABLE OF CONTENTS – Continued

Page

T.d. 140, Decision Allocating Parental Rights and Responsibilities, Court of Common Pleas, Division of Domestic Relations, Filed May 23, 1997 .....App. 254

Extract of T.d. 23, Order Allocating Parenting Rights and Support, Pendente Lite (75M), Court of Common Pleas, Division of Domestic Relations, Entered December 14, 1994 .....App. 418

Extract of T.d. 203, Temporary QMCSO, Entered September 14, 1998 .....App. 421

APPENDIX B1, Hamilton County Clerk of Court

G.O.P. Mailing Touts Clerk's Website.....App. 257

Clerk's Webpage of downloadable documents, DR 02798, Printed January 27, 2000.....App. 425

APPENDIX C, Supreme Court of Ohio Orders

Entry, 00-2117, The Supreme Court of Ohio, Filed December 20, 2000 .....App. 259

Entry, 00-2117, The Supreme Court of Ohio, Filed February 14, 2001 .....App. 260

Reconsideration Entry, 00-2117, The Supreme Court of Ohio, Filed April 4, 2001.....App. 261

Certificate:

Entry, 00-2117, The Supreme Court of Ohio, Filed July 16, 2001 .....App. 335

Entry, 00-2117, The Supreme Court of Ohio, Filed July 26, 2001 .....App. 336

Docket Entries of The Supreme Court of Ohio in **Case 01-1231**, Filed July 6, 2001 .....App. 338

TABLE OF CONTENTS – Continued

Page

Earlier Ancillary:

Entry, 00-2254, The Supreme Court of Ohio, Filed January 17, 2001 ..... App. 262

Entry, 00-2254, The Supreme Court of Ohio, Filed February 22, 2001 ..... App. 263

Reconsideration Entry, 00-2254, The Supreme Court of Ohio, Filed March 19, 2001 ..... App. 264

Entry, 00-545, The Supreme Court of Ohio, Filed April 19, 2000 ..... App. 337

Entry, 00-545, The Supreme Court of Ohio, Filed June 14, 2000 ..... App. 265

APPENDIX D, Statutory Provisions

20 U.S.C. §§1400-1485+, Individuals with Disabilities Educ. Act ..... *Inc. by Ref.*

26 U.S.C.A. §529 (prepaid college) ..... App. 348

Pending Legislation to 26 U.S.C.A. §529 Qualified State Tuition Programs ..... App. 357

28 U.S.C. §1738B, Full Faith And Credit For Child Support Orders Act ..... App. 266

United States Public Laws, 103rd Congress – Second Session, Full Faith and Credit for Child Support Orders Act, Convening, January 25, 1994 ..... App. 275

28 U.S.C.A. §2403(a-b) (interveners) ..... App. 363

Title IV, Social Security Act, 88 Stat. 2351 (1995), 42 U.S.C. §§ 601 *et seq.*, 651 *et seq.* ..... *Inc. by Ref.*

5 U.S.C.A. §551 (federal courts exempted) ..... App. 346

TABLE OF CONTENTS – Continued

Page

42 U.S.C.A. §405(c)(2)(C)(ii) (use of social security numbers).....App. 364

42 U.S.C.A. §405(c)(2)(C)(viii)(I) (use of social security numbers).....App. 365

5 U.S.C. §552a, Records maintained on individuals, The Privacy Act of 1974.....App. 283

Congressional Findings and Statement of Purpose, Section 2 of Pub.L. 93-579.....App. 317

Construction of 1988 Amendments, Section 9 of Pub.L. 100-503.....App. 319

Disclosure of Social Security Number, Section 7 of Pub.L. 93-579, Privacy Act.....App. 320

Disclosural Privacy:

APPENDIX E, United States Constitutional Provisions

United States Constitution Article I, Section 8, clause 1 (General Welfare, Spending).....App. 323

United States Constitution Article I, Section 8, clause 3 (Commerce).....App. 323

United States Constitution Article I, Section 8, clause 18 (Necessary and Proper).....App. 323

United States Constitution Article I, Section 10, clause 1 (Obligation of Contracts).....App. 323

United States Constitution Article IV, Section 1, clause 1 & clause 2 (Full Faith and Credit) ...App. 324

TABLE OF CONTENTS – Continued

Page

United States Constitution Article IV, Section 2, clause 1 (Privileges and Immunities).....App. 324

United States Constitution Article VI, clause 2 (Supremacy).....App. 324

AMENDMENTS (rights listed are not intended to be comprehensive)

First Amendment (rights and freedoms include, inter alia, freedom of speech, belief, assembly, free exercise of religion, associational rights, right to choose, right to maintain the parental relationship, right to appropriate education, right to educational benefits, freedom to petition the government for a redress of grievances, equal justice, children's right to the exercise of the parental, state, nations' duty to educate, right to continue familial bonds; right to travel).....App. 324

Fourth Amendment (civil privacy expectations preclude intrusions by state).....App. 325

Ninth Amendment (unenumerated rights including rights imbued via Declaration of Independence, *Troxel v. Granville* (2000) 120 S.Ct. 2054, ___, (SCALIA, dissenting)).....App. 325

Tenth Amendment (federalism).....App. 325

Fourteenth Amendment, Section 1 (Citizenship, Privileges or Immunities, Due Process, Equal Protection clauses) (Equal protection, gender discrimination; personal rights, privileges; legislative classifications; sibling discrimination; age, wealth, socio economic discrimination; right to travel) right to equal citizenship, et al).....App. 326

TABLE OF CONTENTS – Continued

Page

Fourteenth Amendment, Section 5 (Congressional powers to enforce by appropriate legislation)..App. 326

Twenty-Sixth Amendment, Section 1 (effective political participation includes rights to appropriate educational benefits from state, nation, and parents; age discrimination in educational benefits).....App. 326

Twenty-Sixth Amendment, Section 2 (Congressional powers to enforce).....App. 326

APPENDIX F, Extensions of Time and Select Communications

Excerpt from The Hannah Report of June 11, 1997 on the Senate Judiciary.....App. 439

Letter of September 9, 1997 to Bardes from George Voinovich Governor, State of Ohio.....App. 430

Letter of September 4, 1998 to Bardes from Susan Sloan with the Ohio Tuition Trust Authority .....App. 431

Letter of September 18, 1998 to Bardes from Theodore Adams, Assistant Attorney General, State of Ohio .....App. 434

Letter of January 13, 1999 to Bardes from Susan Sloan, Director of Operations, Ohio Tuition Trust Authority, with copy of Judge Edwards, Stark Cty, OH, Judgment Entry (ordering acquisitn. of O.T.T.A., 26 U.S.C. §529, prepaid college credits in a case where parents agreed) ..App. 436

Letter of March 15, 1999 to Bardes from Loretta Weinberg, Assemblywoman, District 37, New Jersey General Assembly .....App. 339

TABLE OF CONTENTS – Continued

Page

Letter of June 12, 2001 to Clerk, Court of Appeals of Ohio from Loretta Ruffin, Assistant Clerk, U.S. Supreme Court .....App. 341

Letter of July 18, 2001 to Bardes from Loretta Ruffin, Assistant Clerk, U.S. Supreme Court.....App. 343

Letter of July 26, 2001 to Bardes from Anthony J. Steinmeyer, Assistant Branch Director, U.S. Department of Justice .....App. 345

Student Fees Form, City School District of the City of Cincinnati, August 2001.....App. 429

Procedural Defect Inadequate to Derail Federal Jurisdiction Over Disclosural Rights .....App. 440

APPENDIX G, Rules

Fed. R. Civ. Proc. 23 (class action) .....App. 366

Civ. R. 7 (motion procedural defect) .....App. 367

Civ. R. 23 (issues class action) .....App. 368

App. R. 30 (clerks' duties).....App. 371

Civ. R. 53 (must rule on objections).....App. 372

APPENDIX H, Ohio Statutes

Court clerks, exempt records

R.C. §149.43.....App. 379

R.C. §2303.03.....App. 381

R.C. §2303.08.....App. 383

R.C. §2303.26.....App. 384

R.C. §2303.31.....App. 385

TABLE OF CONTENTS – Continued

Page

TITLE 31 (two versions+)

R.C. §3103.03(A),(D);(B) [12/99 vers.].....App. 386

R.C. §3105.011 (equity powers/jurisd.) .....App. 388

R.C. §3105.10(B) (sep. agrmts.) .....App. 389

R.C. §3105.21; also (D) [12/99 vers.] .....App. 390

R.C. §3105.65(B) (powers in dissolutn.).....App. 392

R.C. §3109.01 (gen. age majority).....App. 393

R.C. §3109.03 (parental equality) .....App. 394

R.C. §3109.04(A-B),(E-F),(G),(J) .....App. 395

R.C. §3109.05(A),(E) [12/99 vers.] (powers) ....App. 399

R.C. §3109.401(A-B) (legislative findings).....App. 403

R.C. §3113.21(G)(4)(a) (former 3119.88) .....*Inc. by Ref.*

R.C. §3113.215 [12/99 vers.].....App. 405

R.C. §3119.01(C)(4) [3113.215(A)(12)].....App. 406

R.C. §3119.05(F) [intact 3113.215(B)(5)(f)].....App. 407

R.C. §3119.24 [intact 3113.215(B)(6)] .....App. 408

R.C. §3119.82 [Revised 3113.21(C)(1)(e)] .....App. 410

R.C. §3113.21(C)(1)(e) (tax/support) .....App. 411

R.C. §3105.171(F)(6),(8),(I) (tax/prop.) .....App. 412

R.C. §3119.86 (legislative emancipation) .....App. 414

In earlier version (note duration of Authority Consolidated 3109.05(E) and 3105.21(D); 3103.03(B) intact) .....App. 415

R.C. §3119.88 (legislative findings) .....App. 417

T.d. 233

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'Ellen Bardes SS# 270-52-9846 DOB:	:	Case No: DR 9402798 File No: E194749 CSEA
Plaintiff	:	**FINDINGS OF FACT AND CONCLUSIONS OF LAW**
-vs-	:	
Samuel Pogue Todd III SS# 293-56-1656 DOB: 01/04/54	:	**JUDGE CUNNINGHAM**
Defendant	:	(ENTERED DEC. 29, 1998)

The above captioned matter came before the Court pursuant to a pre-decree allocation of parental rights and responsibilities for the parties two minor children. The Court issued its parenting decision on May 23, 1997. Plaintiff/Mother (hereinafter referred to as Mother) requested the Court issue findings of fact and conclusions of law. The parties subsequently submitted their proposed findings and conclusions of law, the Court having granted Mother's request for extended time to do so. It was later agreed by the parties that the Court would consolidate the merits hearing, Mother's request for an allocation of college expenses, and any objections to the Magistrate's property decision into one hearing at which time the Court would issue its findings and conclusions of law. Mother, however, now denies that she agreed to this consolidation and argues that she requested the Court to issue its findings and conclusions of law prior to

the Magistrate's issuance of the property decision. The Court is taking this matter under advisement pursuant to Mother's request that the Court remand the issue of the allocation of private schooling expenses for the minor children to the Magistrate with a copy of the Court's findings of fact and conclusions of law for the Magistrate's consideration in determining said allocation.

The trial on the pre-decree allocation of parental rights and responsibilities was held on February 3, 1997. Mother was present and representing herself pro se. Father was present and represented by his attorney, Mr. William S. Abernethy, Jr. Based upon the evidence and testimony presented and the applicable law, the Court hereby issues the following findings of fact and conclusions of law:

FINDINGS OF FACT

The parties were married on May 26, 1988 at Cincinnati, Ohio. Two children were born issue of the marriage, namely: Samuel Pogue Todd IV, born February 19, 1990 and Garrison Bardes Todd, born September 26, 1991.

Mother is forty-two years of age, is in good health, and is currently not employed outside the home; she is a student at The University of Cincinnati. Mother resides with the minor children in the former marital residence located at 1035 Paxton Avenue in Cincinnati. Members of Mother's family also reside in the Cincinnati area.

Father is forty-four years of age, is in good health, and is employed on a full-time basis. Father resides at 670

Reisling Knoll in Cincinnati, a home owned by his parents to whom he pays rent. Father receives the benefit of someone cooking and cleaning while his parents are in the home with him which averages approximately seven months per year. It is Father's intention to move from his parent's home at the conclusion of this divorce action. Father's family has resided in the Cincinnati area for many years spanning five or six generations. The parties' families have also known each other and developed friendships over the years providing a stable, loving environment for the children.

Although Father was treated in the past (periodically between 1987 and 1993) for mental health problems (see Exhibit B attached hereto), Father's assertion that since the parties' separation he has not suffered with depression, experienced other mental health problems, and has not been taking medication for these conditions was not disputed by Mother. The parties did stipulate that on May 15, 1993 an "outburst" by Father resulted in some damage to the interior of the marital residence. Wife has no knowledge of any other outbursts by Father since the parties' separation. This evidence does not support a finding that Father's "outburst" involved domestic violence.

Following the parties separation on December 17, 1993, Mother filed a Complaint for Divorce on August 30, 1994 and was subsequently designated the residential parent and legal custodian of the minor children with Father having specific rights of visitation. Father was ordered to pay child support and has complied with all child support orders since that time.

On November 10, 1994, Father requested a full parenting investigation be commenced. The parents met with Ms. Ramona Wade, the Court's Parenting Specialist, who referred them to mediation. Although the parties represent that this mediation was court-ordered, the Court did not "order" the mediation sessions. Mediation was recommended by the Parenting Specialist. During 1995, the parents attended mediation sessions with Ms. Bea Larsen of the Center for Resolution of Disputes. However, mediation was unsuccessful and the parenting investigation was recommenced by Ms. Leslie Duncan, Parenting Specialist. Ms. Duncan issued her Pre-Decree Parenting Investigation report on June 4, 1996 setting forth a recommendation of shared parenting. (Said report is attached hereto as Exhibit C of the parents written Stipulations.)

The allocation of time with the children has not been an issue of conflict between the parents and neither parent is requesting a change in the allocation of time. The parents have communicated and cooperated since their separation on issues relating to the allocation of time with the children. Each parent has indicated during the pendency of the divorce action a willingness to incorporate the allocation of time within a Shared Parenting Plan. Mother filed her Motion for Shared Parenting and her proposed Plan on July 10, 1996. The parties, through counsel, (and subsequently Mother pro se) have attempted on several occasions to agree on the terms of a Shared Parenting Plan. In September, 1996 the Court was informed by counsel for the parties that the parties had reached agreement on the terms of a Shared Parenting Plan and the matter was set for submission of the Plan to

October 29, 1996. Thereafter, counsel for Mother withdrew by agreement and the matter was reset for submission of the Plan or custody pre-trial on December 10, 1996 and custody trial on February 3, 1997. On December 12, 1996, Mother filed her Amended Motion to Order Shared Parenting with an Amended Shared Plan and Addendum to Plaintiff's Amended Shared Parenting Plan. This was followed by Father's Motion to Order Shared Parenting on January 7, 1997 together with his Proposed Shared Parenting Plan.

On January 28, 1997, Mother withdrew her motions to order shared parenting and requested the Court to continue the status quo with Mother as sole residential parent and legal custodian of the minor children. The parties stipulated during the trial in this matter as to their respective allocation of time with children (see Exhibit A of the written stipulations attached hereto).

The sole question before the Court, as acknowledged by the parties, is whether it is in the best interest of the minor children for the Court to order shared parenting and what Plan is to be adopted or whether Mother should be designated the sole residential parent and legal custodian of the children with continued visitation rights to Father. All other issues were referred to the Magistrate for ultimate resolution.

Father requested an order of shared parenting while Mother argued that she should be designated the residential parent and legal custodian of the children as the parties are unable to cooperate and communicate sufficiently to effectuate a viable shared parenting plan. Closing arguments were submitted by Mother on March 31,

1997 and by Father on April 1, 1997. The Court rendered its decision in this matter by Entry of May 23, 1997.

At commencement of the trial in this mater, the parties submitted written Stipulations with Exhibits A,B, and C a copy of which is attached hereto and incorporated herein for all purposes. In addition to the written stipulations, the parties also stipulated on the record to the following:

1. The parties are unable to agree upon issues of child support, educational expenses (to include an allocation of pre-high school, high school and post high school expenses as well as Mother's request for reimbursement of expenses she has paid to date), health insurance/ medical expenses, life insurance, the children's activities and allocation of expenses for same, and allocation of the tax exemptions for the minor children.

2. Mother is to have the same access as Father to records of the family Trusts involving the children and Father will execute all documents necessary to effectuate Mother's access.

Following the trial in this matter, the parties entered into a number of agreements involving disposition of, inter alia, the issues of life insurance; tax exemptions; medical/health insurance; and Mother's access to the Samuel Pogue Todd (Sr.) Inter Vivos Trust, the Samuel Pogue Todd, Jr. Inter Vivos Trust, and the Samuel Pogue Todd III Trust. Mother also stated on the record that she is waiving her right to appeal the Court's decision regarding shared parenting of the minor children but she

is not waiving her right to appeal the Court's final decision on allocation of educational expenses for the children including college expenses.

The parents are able to communicate with each other and cooperate in a manner more than sufficient to implement the terms of the Shared Parenting Plan proposed by Father and filed with the Court on January 7, 1997 as modified by stipulation of the parties on February 3, 1997 and as further modified by this court's order of May 23, 1997. Notwithstanding the parents inability to agree on all of the child-related financial issues, they have continued to successfully engage in concerted efforts to maintain the children's sense of well-being and security throughout this protracted litigation. The parents have been flexible in making revisions to their parenting time when necessary for the convenience of the parents and the best interest of the children. They have been able to establish agreed upon vacation and holiday schedules with the children, transportation and religious training of the children have been addressed by agreement as well as selection of the children's health care providers. These parents have a strong and loving relationship with the children and are to be commended for not compromising the children's relationship with either parent.

The minor children of the parties currently attend Summit Country Day School and have been so enrolled since the children were ages three and two, respectively. Prior to attending Summit Country Day, the children attended two private pre-schools on a part-time basis. The parents stipulated that Summit is one of the finest educational institutions in Ohio. Further, that the children have adjusted well to the school environment and

have performed well in school both behaviorally and academically. This stipulation, however, is not to be used at any time as "evidence of Father's consent to contribute to the cost of the children's education at Summit or another private school." **Both parents acknowledge that the children are "gifted" intellectually and academically.**

Father does not dispute that it would benefit the minor children to attend Summit Country Day School and he has no disagreement with their continued enrollment in and attendance at Summit. However, since commencement of the within action, Father has continually voiced his opposition to an order requiring him to contribute to the cost of private schooling for the minor children as it is his position that he cannot afford the cost of such schooling.

Mother contends that as early as 1991 the parties agreed that the children should attend private school and that later Father "reneged" on the agreement. It is Mother's position that the withdrawal of Father's agreement was further evidence of the parties' inability to effectively cooperate sufficient to engage in shared parenting of the children. As evidence of an agreement on private schooling, Mother offered Plaintiff's Exhibit No. 3 and No. 4. The Court admitted these Exhibits and allowed the parties' testimony on this issue for the limited purpose of determining the parties ability or inability to communicate and cooperate.

The parents considered the question of private education for the minor children and **attended an open house at Summit Country Day School** prior to selection

of the school for the children's education and Samuel's enrollment. **Father had built a spreadsheet (see Plaintiff's Exhibit No. 3) to calculate the total cost of schooling for the minor children, projected over a fifteen-year period, at Summit Country Day School and Cincinnati Country Day School. It was determined by the parties that Summit was the better financial choice.**

Father did not disagree with the decision to enroll Samuel at Summit, however, he was concerned at that time about the cost of a private school education for the children. Father was then self-employed, earning a minimal income. Although the parties had no mortgage payment, both cars were unencumbered, and there were no short or long term debts aside from family loans to pay the children's schooling and loans between the parties, Father was concerned about the limited stream of income. Notwithstanding this concern, **Father was aware of Mother's enrollment of the children at Summit Country Day School and payment of schooling expenses** (see Plaintiff's Exhibit No. 4).

The parties have stipulated that Father has not contributed to the cost of the children's private school education since the parties' separation in December, 1993. The cost of the children's Summit education for 1996/1997 is approximately $15,000 per year which Mother testified will increase at the rate of seven to nine percent per year. Since the parties [sic] separation, Mother has expended approximately $36,000.00 for the children's private schooling. These funds have been paid from Mother's checking accounts, the custódial accounts which Mother

maintains for each of the children, and from the children's maternal grandmother, Priscilla Haffner (see Plaintiff's Exhibit No. 4).

The issue of private schooling for the minor children, allocation of expenses, and Mother's request for reimbursement from Father for payment of past schooling expenses is a matter which the parents acknowledged is referred to the Magistrate for disposition. However, as to the question of whether the evidence on this matter supports a finding that the parties are unable to cooperate and communicate sufficient [sic] to engage in shared parenting, the Court finds the evidence is insufficient.

In the past, both children have been seen by a speech therapist, Ms. Janet Marsh of the Speech Pathology Department of the Children's Hospital Medical Center (see Plaintiff's Exhibit No. 2). Ms. Marsh's report of March 22, 1995 states treatment for Samuel was discontinued on January 26, 1995; Samuel's speech problems are, in the opinion of Ms. Marsh, resolved. However, as of July, 1996, Garrison was still in need of on-going speech therapy which Ms. Marsh testified could require weekly sessions for a period between six months and a year. No expert testimony was presented as to Garrison's current (February, 1997) need for therapy. The current cost of a weekly one-hour speech therapy session at Children's Hospital Medical Center is $96.00 per hour.

Although Father was not fully supportive of or in complete agreement with Mother's position regarding the "need" for the children's speech therapy as he believed they were to young for the therapy, he now acknowledges that speech therapy was necessary for the children. The

only issue is one of allocating the costs for such therapy. Father submitted the bills given to him to his insurance provider which claims were subsequently denied. Father has not paid any portion of the uninsured medical speech therapy sessions over the past several years. Pursuant to the Court's temporary order of health care, the parties are to equally divide the cost of any uninsured medical expenses which would include the cost of speech therapy incurred for the benefit of the children subsequent to the effective date of the Court's temporary order. If Mother is seeking a different allocation of medical expenses, such request is properly before the Magistrate on a final determination of issues to be addressed during the property trial in this matter.

The evidence presented on the issue of speech therapy for the minor children does not support a finding that the parties cannot communicate or cooperate sufficiently to engage in shared parenting of the children. Further, the Court does not find that Father engaged in economic misconduct in his pursuit of a custody investigation, a parenting trial, and resolution of financial issues upon which the parties were unable to agree. Nor does the evidence presented support a finding that Father "unreasonably exacerbated and attenuated the Divorce Action in order to inflict financial and emotional duress and hardship on Mother and the children" as alleged by Mother in her proposed findings of fact.

(Plaintiff's Exhibits No.'s 1-4 are incorporated herein for all purposes.)

CONCLUSIONS OF LAW

In making a decision regarding the allocation of parental rights and responsibilities, the Court is mandated to follow the law as set for in Ohio Revised Code Sec. 3109.04. The Court must make its decision taking into account "that which would be in the best interest of the children". The factors which the Court must consider when determining the best interest of a child are set forth in Sec. 3109.04(F)(1). When determining whether shared parenting is in the best interest of the children the Court shall apply the law as set forth in Sec. 3109.04(F)(2) and the referenced sections set forth therein.

The Court has fully complied with its legal mandate and finds that shared parenting is in the best interest of the minor children. The Court approves Father's shared parenting plan as modified by stipulation of the parties and with the modifications set forth in the Court's order of May 23, 1997.

The parties are loving, caring parents who have communicated and cooperated with each other during a difficult period to provide their children with a sense of well-being and a secure home environment. The parties live in close proximity to each other and have continued to encourage love and respect between the children and the other parent. The children have adjusted very well to their community and school environment. Their extended families live in the Cincinnati area and are involved in the children's lives.

While the parents have agreed upon many matters affecting their children, **the major areas of disagreement**

involve financial matters. Primarily, the private schooling and education of the minor children including college expenses. It is undisputed that the children are "gifted" and would benefit from private schooling. However, the question of financing this pre-college education is at issue and is a matter the parties acknowledge is to be referred to the Magistrate for disposition. **Another and equally compelling question is whether the parents can be court-ordered, without their agreement, to contribute to the cost of a college education for the children.** This matter is to be heard by the Court.

While the parties are unable to agree on all matters of shared parenting, the Court does not find that their disagreements so poison the atmosphere as to prevent shared parenting of the children. The children's interests are best served by the continued involvement of both parents in their lives to the greatest extent and with as much communication and contact between the parents as is possible.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

[T.d. 233]

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'ELLEN BARDES SSN: 270-52-9846 DOB: 7/21/56	:	Case No. DR9402798 File No. E-194749-0-7 C.S.E.A. No. _____
Plaintiff	:	Judge Cunningham Magistrate Murphy
v.	:	
SAMUEL P. TODD, III SSN: 293-56-1656 DOB: 10/9/54	:	**STIPULATIONS**
Defendant	:	

The parties hereto enter into the following Stipulations for the purpose of the hearing to be held herein on the 3rd day of February, 1997.

1. The parties were married on the 26th day of May, 1988 and two (2) children have been born of the marriage, namely Samuel Pogue Todd IV, born February 19, 1990 (6) and Garrison Todd, born September 26, 1991 (5).

2. The parties have lived separate and apart since December, 1993.

3. The parties agree as to the allocation of parental time with the children. That allocation of time is set forth on the Schedule attached hereto as Exhibit "A".

(a) Each party stipulates that the other parent is a fit and proper parent and custodian of the children and that each is capable of caring for the children and meeting the needs of the children. This Stipulation shall not be

used at any time as evidence of Mother's consent that Father could be an appropriate sole custodian of the minor children.

(b) One issue for this Court to determine is whether the allocation of parental time with the children is to be accomplished within the framework of the Shared Parenting Plan as proposed by Father, or by Mother being designated as the residential parent and legal custodian with Father having parenting time or visitation pursuant to the allocation of time as stipulated.

(c) Another issue to be considered by this Court involves the ability of the parents to communicate and cooperate effectively within the framework of a Shared Parenting Plan in order that they might effectively carry out the purpose of a Shared Parenting Plan.

4. The parties stipulate that Exhibit "B" attached hereto is a summary of Father's mental/psychological history, involving diagnosis, treatment and prognosis of Father's situation. For purposes of the hearing of February 3, 1997, this history will be used for the purpose of attempting to determine the issue of custody and/or the ability of the parties to communicate and cooperate effectively within the context of a Shared Parenting Plan, pursuant to all applicable statutes.

5. The parties further stipulate:

(a) The children are currently enrolled in the Summit Country Day School with Samuel in grade one and Garrison in Kindergarten.

(b) The children have adjusted well to the school environment.

(c) The children have performed well in school both behaviorally and academically.

This Stipulation shall not be used at any time as evidence of Father's consent to contribute to the cost of the children's education at Summit or another private school.

6. The parties further stipulate that Exhibit "C" attached hereto is the report of Leslie Duncan dated June 4, 1996, including her recommendations. The parties do not stipulate to the accuracy of all facts as set forth in Exhibit "C". This Stipulation shall not be used at any time as evidence of Mother's consent to enter into a shared parenting arrangement with Father. This Stipulation shall not be used at anytime as evidence that Mother is in support of Ms. Duncan's recommendation for shared parenting.

/s/ D Bardes
D'Ellen, Plaintiff

Respectfully submitted,

STRAUSS & TROY

By: /s/ William S. Abernethy, Jr.
William S. Abernethy, Jr. 0002137
Attorney for Defendant
2100 PNC Center
201 East Fifth Street
Cincinnati, Ohio 45202-4186
(513) 621-2120

[T.d. 233]

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'ELLEN BARDES	:	
a/k/a	:	CASE NO. DR9402798:
D'ELLEN BARDES TODD	:	File: E 194749-0-7
SS #: 270-52-9846	:	C.S.E.A.: _____
DOB: 07/21/56	:	
Plaintiff	:	Judge
	:	Penelope Cunningham
vs.	:	Magistrate
SAMUEL POGUE	:	William Murphy
TODD III	:	
SS #: 293-56-1656	:	**STIPULATIONS EXHIBIT**
DOB: 10/9/54	:	**A: SHARED TIME**
	:	**SCHEDULE**
Defendant	:	

1 The parties hereto enter into the following Stipulations for the purpose of the hearing to be held herein on the 3rd day of February, 1997:

1.1 This line has been intentionally left blank

1.2 Allocation of Time With Each Parent

1.2.1 Routine Schedule

1.2.1.1 Father shall share time with the parties' minor children as follows:

1.2.1.1.1 Every other weekend from 6:00 PM on Thursday to the following Monday morning when Father shall deliver them either to school and or to the location mutually agreed upon whether the Mother's home, athletic

club, child care or other geographically-reasonable destination between 8:00 AM and 8:15 A.M.

1.2.1.1.2 Every other Thursday from 6:00 PM until Friday at 6:00 PM. when Father shall deliver the children to the location ~~specified by Mother~~ [mutually agreed] [DB SPT] whether the Mother's home, athletic club, child-care or other geographically-reasonable destination; in the event that Mother plans to take the children out-of-town over the weekend, with agreement of Father Mother may pick up the children during/after school on Friday.

1.2.1.1.3 Mother shall drop the children off at Father's home, athletic club, child-care or other geographically-reasonable destination mutually agreed upon on such Thursday evenings, provided however that Father's home is located within seven miles of Mother's home; in the event that Father would relocate to a new residence which is seven miles or more away from Mother's residence, Mother shall optionally elect whether to drop off the children at Father's new residence or at a geographically reasonable and mutually agreeable destination; Father shall have such same options for return of children in the event that Mother relocate to a new residence, which Mother's new residence is not physically located within seven (7) miles of

Father's Residence. ~~such present residence's addresses as defined in paragraph 3.1.~~ [SPT DB]

1.2.1.1.4 All other time allocated below to Father for vacations and holidays.

1.2.1.2 Mother shall share time with the parties' minor children at all times not specifically allocated herein to Father.

1.2.1.3 Each party shall be responsible for delivering the children to the mutually agreed upon location to end his or her time with the children, unless specifically agreed to otherwise or otherwise provided herein. The parent who has the children at the time shall be responsible for providing transportation for the children to and from school and activities unless other arrangements have been made by the parties.

1.2.2 Vacations & Holidays

1.2.2.1 Vacations

1.2.2.1.1 Each parent is entitled to take the parties' minor children for a maximum of four weeks of vacation during each year, with no vacation to exceed two weeks at a time; vacations may be spent at any location including each parent's respective homes or elsewhere. A maximum of three of such four weeks may be exercised by either parent during the children's summer school vacation which generally occurs in the period, June through August. Each parent shall give the other a minimum of thirty days' written notice of his or her intent to exercise this right,

including the dates and places for the scheduled vacation(s), if known. The parties acknowledge that this notice is not required for (a) those weekends or weekdays either parent may choose to take the children away during his/her routine schedule set forth above and (b) during his/her holiday schedule/ extended periods as set forth below.

1.2.2.1.2 Each parent agrees that he/she shall be flexible regarding requests for changes in the routine schedule preceding and or following any vacation, in order to accommodate the non-vacationing parent's need (a) to ready the children for such vacation and or (b) to recover from the children's extended absence by spending extra time subsequent to such vacation with the children and or (c) for any other reasonable reason not specifically set forth herein. It is the parties intent in this paragraph that the non-vacationing parent shall not be unduly penalized.

1.2.2.1.3 Each parent has annually alternating first-choice on spending vacation time with the children during each major school break, including Spring break, Christmas Break, and Summer vacation break; as such if Father elected to take the children on vacation during Christmas break one year, Mother would have the first choice of spending Christmas vacation time with the children during the following year.

1.2.2.2 Holidays

1.2.2.2.1 Each party shall exercise his/her right to share time with the children on holidays, as follows:

1.2.2.2.1.1 Each parent shall have the children on the following holidays:

1.2.2.2.1.2 In even numbered years, Father shall have the children on New Year's Day, President's Day, Memorial Day, Labor Day, Thanksgiving, Christmas Eve, and Christmas Day Late and Mother shall have the children on Martin Luther King Day, Easter, Fourth of July, and Christmas Day Early. In odd numbered years, Mother shall have the children on all holidays that Father had the children in even numbered years, and Father shall have the children on all holidays that Mother had the children in even-numbered years.

1.2.2.2.1.3 Unless the parties otherwise agree, they shall each be entitled to spend reasonable time with both children on each child's respective birthday. Each parent agrees to advise in advance the other parent of

dates, times, locations, and children-invitees to celebrations planned on or around the dates of the minor children's birthdays; this provision, however, does not imply that the other parent must be invited to attend such celebrations, only that he or she be timely advised in full of their nature.

1.2.2.2.1.4 In the event that the parties would elect to mutually host a birthday party, the parties agree to equitably share in the costs incurred; should either parent be invited and subsequently attend a celebration hosted by the other parent, this, in itself would not be construed as an agreement to share the costs incurred.

1.2.2.2.1.5 Father shall have the children on Father's Day from 10:00 a.m. to school or until 8 a.m. the next morning. Mother shall have the children on Mother's Day from 10:00 a.m. to school the next morning.

1.2.2.2.1.6 On or near the anniversary date of each parent's birth, each parent shall have the

option of whether or not to spend reasonable time with the children on or near each parent's respective birthday. The non-birthday parent shall accommodate the birthday parent's "personal holiday" preferences and schedule.

1.2.2.3 The following hours shall be in effect for all holidays if they fall on a day other than one that is normally that parent's day to be residential parent: The Holiday Period shall be from 10:00 a.m. to 8:00 p.m. for Martin Luther King Day and President's Day. The Thanksgiving Holiday Period shall be from Wednesday at 6:00 p.m. to Friday at 8:00 p.m. The Easter Holiday Period shall be from Saturday at noon until Sunday at 8:00 P.M. The New Years Holiday Period shall be from 12/31 at 6:00 p.m. to 1/1 at 8:00 p.m. The Fourth of July Holiday Period shall be from 10:00 a.m. on the Fourth of July to the next day at 8:00 a.m.; The Memorial Day Holiday Period shall be from Sunday at noon to Monday at 8:00 p.m.; the Labor Day Holiday Period shall be from Sunday at 6:00 p.m. until Monday at 8:00 p.m.

1.2.2.4 The Christmas Eve Holiday Period shall be from 12/23 at 6:00 p.m. to 12/24 at 9:00 p.m.; the Christmas Day Early Holiday Period shall be from 12/24 at 9:00 p.m. to 12/25 at 4:00 p.m.; the Christmas Day Late

Holiday Period shall be from 12/25 at 4:00 p.m. to 12/27 at 6:00 p.m.

2 Miscellaneous Shared Time Provisions

2.1 The provisions set forth above relating to the times in which each parent is to share time with the children shall not preclude the parties from the ability to alter said periods by mutual agreement. The parties shall make every reasonable effort to accommodate each other's schedule, and they will cooperate in the utmost good faith to minimize the difficulties necessarily involved in the upbringing of the minor children where the parties are living separate and apart from each other, and in carrying out their obligations under this Schedule, to the end that the relationship of the children with both parents shall be as harmonious as possible. The parties also recognize, that because this schedule potentially applies many years into the future, it may be necessary from time to time to adjust the time allocation set forth in this Schedule.

2.2 Both Father and Mother shall use best efforts to encourage the other parent's relationship with the children. In the event a change in schedule is necessary, the party who needs to change the schedule shall notify the other as soon as possible so as to minimize the conflict and/or problems associated with said schedule change. In the event of a conflict, the following is the order of preference: 1st: Holidays; 2nd: Vacations; 3rd: Weekends; 4th: Midweek Days.

2.3 Each party states that neither has been convicted of or pleaded guilty to any criminal offense involving any act that resulted in a child being an abused child or a neglected child, nor has he/she previously been determined, in a case in which a

child has been adjudicated an abused child or a neglected child, to be the perpetrator of the abusive or neglectful act that was the basis of the adjudication. Neither parent has ever been a party to a civil or criminal case or investigation concerning child abuse, child neglect or domestic violence regarding the parents' minor children.

2.4 When either parent will be gone overnight, regardless of the age of the children, the other parent shall be afforded the opportunity to exercise overnight parenting time. If either parent is more than ninety minutes late in returning/picking up the children without calling to make reasonable arrangements and or without just cause may be subject to contempt and or may forfeit that period of time with the children; exception shall be made if, and only if, the tardiness of the parent not sharing time with the children is for just cause and the parent who is sharing time with the children receives both prompt notification and a reasonable estimated modified arrival/departure time.

2.5 In the case of an unexpected extended illness, which would require either child to stay home from school, both parents agree to be flexible and available, if needed to stay home with a child or children or otherwise equitably accommodate such illness during its duration, even if the illness occurs during days when the children would usually be with the other parent, which care shall be administered in each parent's own residences or in a medical-facility, but not in the other parent's residence, except in the unusual event that an ill child should not be physically relocated.

2.6 Father and Mother agree to attempt to employ only non-smoking child care personnel to watch over the minor children. In the event that a child care provider does smoke, he or she must agree not to smoke whatsoever while a child is in his or her care.

2.7 Mother and Father shall continue to live separate and apart from the other, as they have been doing since December 17, 1993. Mother and Father shall each go his or her own way without direction, authority, control or molestation from the other, the same as though unmarried and each further agrees not to interfere with the other in any manner whatsoever. Mother may reside at such place or places, ~~subject to Section 3;~~ [DB SPT] as she may elect and may engage for her own separate use or benefit in any employment, business, avocation, relationship and or profession which she may deem advisable. Father may reside at such place or places, ~~subject to Section 3;~~ [DB SPT] as he may elect and may engage for his own separate use or benefit in any employment, business, avocation, relationship and or profession which he may deem advisable.

2.8 Each parent currently provides and shall continue to provide living accommodations such that their minor children shall have a bedroom separate from each parent in his/her respective residence during each child's minority.

2.9 If any child becomes seriously ill or injured or incurs a non-medical emergency during the time that such child is with either parent, that parent shall notify the other as soon as is practical and shall give to the other the details of such illness, injury, or emergency.

2.10 It is the intention of the parties to have free and ongoing access to the minor children by telephone at all reasonable times when each child is with the other parent. It is also the intention of the parties to allow the children to have free and ongoing access to the other parent by telephone at all reasonable times when each child is with the other parent. The parent then sharing time with the minor children should neither discourage nor interfere with any telephone contact initiated or desired by a child.

2.11 Each parent is responsible for providing transportation of the children as specifically set forth herein unless otherwise agreed to by the parents, except in the event that either parent elect or be obligated to temporarily or to permanently relocate to a community outside the Greater Cincinnati area.

The rest of this page is intentionally blank.

[T.d. 233]

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'ELLEN BARDES a/k/a D'ELLEN BARDES TODD SS #: 270-52-9846 DOB: 07/21/56 Plaintiff vs. SAMUEL POGUE TODD III SS #: 293-56-1656 DOB: 10/9/54 Defendant	CASE NO. DR9402798: File: E 194749-0-7 C.S.E.A.: Judge Penelope Cunningham Magistrate William Murphy **STIPULATIONS EXHIBIT B: SUMMARY OF FATHER'S MENTAL/ PSYCHOLOGICAL HISTORY**

The parties hereto enter into the following Stipulations for the purpose of the hearing to be held herein on the 3rd day of February, 1997: The following Summary of Father's Mental/Psychological History accurately represents the diagnoses, treatments administered, and known prognoses of Mr. Samuel P. Todd III's history with such psychiatric practioners:

1 **Dr. Charles Feuss, M.D., Psychiatrist**
(Mr. Todd saw Dr. Feuss infrequently during the years 1987, 1990, 1992, and 1993).

1.1 In 1987, Dr. Feuss initially saw Mr. Todd, Diagnosis: **Depression.**

1.2 In 1990, diagnosis: **Depression**; Treatment Prozac. Prognosis: Unknown, ~~due to fact that Mr. Todd failed to consistently administer his medication.~~

[SPT/DB]

1.3 In 1992, Diagnosis: **Panic Disorder of Fugue States; Psychogenic Fugue** (disorder where there is sudden, unexpected travel away from home or customary work locale with assumption of a new identify and inability to recall one's previous identity). Treatment: Xanax. Prognosis: Unknown, ~~due to fact that Mr. Todd failed to consistently administer his medication~~

[SPT/DB]

1.4 In 1993, Diagnosis: **Dissociative States with Reactions** (neurosis which helps Mr. Todd to handle stress); **Schizoid Personality** (disorder where there is a pervasive pattern of indifference to social relationships and a restricted range of emotional experiences). Treatment: Xanax. Prognosis: Unknown, ~~due to fact that Mr. Todd failed to consistently administer his medication~~

[SPT/DB]

2 Dr. Clayton Gotwals, M.D., Psychiatrist:
(*Mr. Todd saw Dr. Gotwals four times per week during 1991*).

2.1 From February 1, 1991 through August, 31, 1991, Samuel Pogue Todd III participated in at least **ninety-three (93)** separate sessions of Psychoanalysis therapy with Clayton K. Gotwals, M.D. at either the Cincinnati Center for Psychoanalysis, Inc., 3001 Highland Avenue, Cincinnati, OH 45219, 513/961-8846 or at Christ Hospital, Cincinnati, OH 45219. Diagnosis: Depression,

Psychogenic Fugue. Treatment: Xanax; Prognosis: Unknown.

2.2 On June 3, 1991, Dr.. Clayton Gotwals, M.D. admitted Mr. Todd to the psychiatric ward at Christ Hospital. Upon admission, Dr. Gotwals diagnosis was as follows:

2.2.1 Axis I. **Major depression;**

2.2.2 Axis II. **Personality disorder, not otherwise specified;**

2.2.3 Axis III. The patient is physically healthy.

2.2.4 Treatment: Desipramine; Pamelor.

2.2.5 Upon discharge from Christ Hospital on June 7, 1991, Dr. Gotwals made the following Discharge Diagnoses:

2.2.5.1 Depressive Reaction;

2.2.6. **Personality disorder, not otherwise specified.**

2.2.7 Upon discharge from Christ Hospital, the following Treatments were prescribed as follows: Pamelor; Continue four times weekly psychoanalysis with Dr. Gotwals.

[T.d. 233]

STIPULATIONS, EXHIBIT "C"

PRE-DECREE PARENTING INVESTIGATION

RE: Todd, Samuel III & D'Ellen
CHILDREN: Samuel, DOB: 02-19-90
Garrison, DOB: 09-26-91
A-9402798 E-194749
PARENTING SPECIALIST: Leslie Duncan, MSSW
DATE ASSIGNED: March 12, 1996
DATE COMPLETED: June 4, 1996

COURT STATUS:

Mr. and Mrs. Todd reluctantly agree on a shared parenting arrangement regarding the children. They are not in agreement as to how educational and medical expenses will be paid. A custody investigation was ordered.

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

[THIS PAGE INTENTIONALLY LEFT BLANK]

BACKGROUND:

Mr. and Mrs. Todd met in 1986 at a social function attended by family members. Mrs. Todd was self employed at the time doing publishing work and Mr. Todd was working for a large accounting firm. The couple dated two years prior to marrying in May 1988. Both Mr. and Mrs. Todd owned homes in the Hyde Park area. They moved into Mr. Todd's home and used Mrs. Todd's home for rental property. Prior to marrying, Mrs. Todd briefly saw a Charles Fuess, MD, psychiatrist, for problems surrounding her work.

Shortly after the marriage, Mr. Todd's job transferred to Ann Arbor, Michigan. The couple planned to start a family after the move. Mrs. Todd had Samuel in February 1990. The couple returned to Cincinnati so that Samuel could be born as an eight generation Cincinnatian. Mrs. Todd quit working after the move and she spent her time taking care of the family and maintaining their homes as rental property in Cincinnati. Mr. Todd had an expense account through his employment which Mrs. Todd managed. Four months after Samuel's birth, Mr. Todd was fired because of discrepancies in his expense accounts. Mr. Todd was asked to repay the amount he owed but Mrs. Todd felt the expenses were appropriate so he refused. This caused a great deal of anguish for the

couple in that Mrs. Todd felt Mr. Todd blamed her for his discharge.

The couple then returned to Cincinnati and they sold Mrs. Todd's property and she purchased Mr. Todd's home. She purchased the home with the equity she had in her other home and moneys she had received in inheritance. The home is owned by Mrs. Todd. Additionally the couple started a company know [sic] as Todd EDP Audit Company. Mr. Todd had never been self employed and Mrs. Todd had primarily worked for herself. The couple were not suited to working jointly in this type of occupation. The stress of being self employed was overwhelming to Mr. Todd. Mrs. Todd was much more suited to this type of occupation but she was primarily being a full time housewife. Further stress was caused by Mr. Todd commuting to his contractual employer in Pennsylvania on a weekly basis spending the majority of the time there. Mr. Todd indicated the stress became overwhelming for him. He was unable to cope with Mrs. Todd's critical attitude regarding him and he became uncomfortable at home. Essentially Mrs. Todd depended on Mr. Todd to help with the children so that she could complete her part of the work associated with the business. They would switch off tasks when Mr. Todd returned. Instead of returning home, Mr. Todd would disappear whenever the stress became too overwhelming. He would be gone for days at a time. During this time, Mrs. Todd became pregnant with Garrison and she gave birth in September 1991.

Mrs. Todd reported that during 1991 though the time they separated in 1993 she filled [sic] numerous missing persons reports with the police because Mr. Todd had disappeared. Mr. [sic] Todd initiated therapy for Mr. Todd with

her former psychiatrist, Dr. Feuss, as a means of helping with the problem. He saw him off an on through 1993. Mr. Todd also saw a Clayton Gotwall, MD, psychiatrist in 1991 essentially for the same reason. The couple [sic] problems were further complicated by Mrs. Todd trying to control Mr. Todd's behavior. When Mr. Todd would try to leave the home, Mrs. Todd would attempt to stop him. This caused physical altercations between them. Mr. Todd attempted to distance himself from Mrs. Todd by living separately in the basement. The couple maintained this living arrangement for a year prior to separating permanently in December 1993. Mr. Todd moved to his parent's home and Mrs. Todd remained in the marital home with the children.

Mrs. Todd filed for divorce in August 1994 and she was designated the residential parent. The temporary visitation arrangements are that the children would be with their father every week from 6 PM on Thursday until 6 PM on Friday. On alternate weekends they are with their father from 6 PM on Thursday until 8 AM on Monday before school. This arrangement has been satisfactory to both parents and they have not had any problems with the arrangement. After the separation, the couple dissolved their joint business venture and Mr. Todd went to work for his current employer. Mr. Todd indicated that he has not had any further need for psychiatric care because he is no longer living with Mrs. Todd.

CURRENT SITUATION:

Mr. Todd lives at 670 Reisling Knoll in the Mt. Lookout area. He is residing with his parents, Samuel Todd, Jr. and Emily Todd. His father is a retired doctor. Mr. Todd works

for Computer Horizons as a contract programmer. He works from 8:30 AM to 5:30 PM and made approximately $65,000 last year. Also, Mr. Todd is self employed as a computer consultant. His hours vary from one to sixteen per week and he makes $75.00 per hour.

Mrs. Todd lives at 1035 Paxton in the Hyde Park area. Residing with her are Samuel, age six and Garrison, age four. Mrs. Todd is not employed. She receives child support and alimony. Additionally she has income from stocks she owns in the amount of approximately $9,000 annually.

CHILD SUPPORT STATUS:

Mr. Todd is ordered to pay $1078.20 per month in child support. His child support payments are current. He is also ordered to pay $275.00 per month is [sic] alimony. There is an arrearage of $483.01 on this account. The arrearage is mostly due to non-payment of the poundage.

THE FOLLOWING FACTORS WERE CONSIDERED IN MAKING THE RECOMMENDATIONS:

1. **The wishes of the parents regarding the allocation of parental rights and responsibilities**

Both Mr. and Mrs. Todd are essentially in agreement with the current parenting schedule they are following. The arrangement has been adhered to for the past two years and the children are comfortable with the arrangement. The problem with finalizing the plan has to do with costs around medical expenses and educational expenses. Mrs.

Todd believes that Mr. Todd should provide for the children's private educational expenses. Mr. Todd indicated that he would have no problem doing so as long as he had the money to provide for this expense. Mr. Todd is paying his child support and spousal support. He indicated that there is not additional moneys available to provide tuition for both children to attend private schools. Samuel, age six and Garrison, age four, attend Summit County Day School. Samuel was in kindergarten this year and Garrison attended preschool. Mrs. Todd has paid the tuition with money she has received as an inheritance. Mrs. Todd believes that there are moneys available to provide the children with private education held in trust by Mr. Todd's family. Mr. Todd indicated that there is approximately a little more than thirty thousand dollars available and that this amount may in the future only cover part of their college education. Mr. Todd likes the school the children are attending. He is in disagreement as to how this expense will be paid.

Mrs. Todd questions whether shared parenting would work for them given the fact that Mr. Todd had emotional problems during the marriage that affected their ability to discuss problems. She believes that he will never be able to work cooperatively with her in making joint decisions. Mrs. Todd indicated that Mr. Todd agreed to sending the children to Summit County Day School when they were together but he has since reneged on his promise. Further she believes that they have had problems regarding differing opinions as to Garrison needing speech therapy. Mrs. Todd stated that Mr. Todd refused to pay for the therapy and that she is paying this expense. Mr. Todd indicated that the speech therapy was not paid for by his

insurance company because they said Garrison was too young for the service and that they would not pay for pre-speech problems. Mrs. Todd stated that if they could set specific requirements regarding the educational expenses and medical expenses in the shared parenting plan then she believes that they could have a shared parenting plan.

Mr. Todd believes that Mrs. Todd goes "overboard" on many issues regarding the children. He indicated that he never won an argument with her when they were married and that he tries to avoid conflicts with her. He believes that she is being unrealistic in her expectations regarding the children's educational expenses. Mr. Todd indicated that her insistence that Garrison have speech therapy shows that she tends to take issues to the extreme. He does believe that she has the children's best interest at heart and that she will always consider their needs. Mr. Todd would like to have the children more often but he indicated that his work schedule will not allow him the additional time. He believes that they could work out the issues regarding shared parenting if they can come to some agreement on educational and medical expenses.

2. The children's interaction and interrelationship with parents, siblings and others

During the marriage, Mrs. Todd has been the children's primary caretaker. She has taken care of the majority of their physical and emotional needs. She has taken them to their doctor's appointments and cared for them when they have been ill. She is primarily involved with their

school activities. Mrs. Todd is not employed and she exclusively invests her time in meeting their needs. The children are bonded to her. They are conformable [sic] around her and they depend on her to care for them.

Since the couple separated in December 1993, the children have been spending every Thursday night with their father and every alternate weekend with him. The children interacted affectionately with their father and they appear comfortable in his care. They are comfortable spending extended periods of time in their paternal grandparent's [sic] home. Both children reported a warm and affectionate relationship with their paternal grandparents.

Both children reported participating in enjoyable activities with their parents. Mr. Todd has a membership in the Cincinnati County [sic] Club where they participate in tennis, swimming and squash lessons. Neither child has a good concept of divorce but each child realizes that their parents will no longer be living together. Mr. and Mrs. Todd have not involved the children in their arguments regarding the divorce. They have tried to remain cordial for the children's benefit. Both Samuel and Garrison understand that their parents are arguing over whether or not they can attend Summit County Day School.

Samuel and Garrison have a normal sibling relationship. They are close in age and they are closely attached to one another. Both children are polite, well mannered children.

3. **The children's adjustment to home, school and the community**

Samuel, age six, completed kindergarten at Summit County Day School. His teacher, Ms. Pohl, provided a detailed description of his progress in school. She reported that "Samuel continually operates well one grade above his chronological age in all academic areas." She indicated no problems [sic] areas except articulation which was a weakness but she indicated that he has significantly improved in that area. She believes that his articulation needs to be monitored on a yearly basis. As to his peer relationship, Ms. Pohl reported that Samuel relates well to his peers and that he often assumes a position of leadership within his class. (See Attachment)

Garrison, age four, attended pre-school at Summit County Day School. He has been attending since he was three years old. Ms. Pohl is also his teacher. She reported that he is a bright child and that he is doing outstanding in all areas. As to his relationship with others, Ms. Pohl commented that Garrison is [sic] shy, quiet child but that he relates well to his peers and teachers. She indicated that he relies on his brother for emotional support when things bother him. Further she commented that he sometimes has problems with the transition from one household to the other. Ms. Pohl reported that Garrison has some articulation problems and that he is receiving speech pathology.

She is of the opinion that his problems will disappear with age and therapy. (See Attachment) In talking with Garrison, he is easily understood and he had no difficulty expressing himself.

Ms. Pohl reported that Mrs. Todd has been actively involved in the children's education. She provided a statement as to the number of activities she has been involved in with the school. One of her primary contributions was to design and conduct an in-class program for the children. She has also been a visiting computer instructor and she has helped the administration by providing research through the internet. Ms. Pohl reported that Mr. Todd attends the annual "Father's night". She reported that he has not attended any other conferences. **She reported that initially both Mr. and Mrs. Todd were committed to the school prior to enrolling Samuel in August 1993. (See Attachment)**

4. The mental and physical health of person involved

Mr. and Mrs. Todd do not have any obvious physical health problems or physical disabilities that would limit their ability to raise their children. Samuel and Garrison do not have any obvious physical health problems or physical disabilities that need special attention.

Mrs. Todd, age thirty nine, was born in Cincinnati. She is the middle child of four children. Her father supported the family with money he received from her grandfather and by working as a self employed publisher. Mrs. Todd's mother was a housewife. Her early childhood was less than ideal given the fact that her father was abusive to her mother and he drank and gambled excessively. Mrs. Todd indicated that she was always well care [sic] for because her parents came from wealthy families. They lived in very nice neighborhoods and they had the advantage of being raised in an upper class home. Mrs. Todd's

mother attempted to protect her from father's abusive behavior by hiding it from her. She reported that her father was physically abusive to her brother and that she witnessed his abusive behavior towards him. She indicated that her father was particularly rigid in his expectations of him as opposed to her sisters. Her parents divorced during her senior year of high school. Both remarried shortly afterwards. Mrs. Todd has a closer relationship with her mother who lives in Cincinnati than her father who lives in Florida. Mrs. Todd's mother has been helping her financially throughout the separation.

Mrs. Todd attended public schools in the Hyde Park area until her junior year of high school. Mrs. Todd's father was especially fond of Culvert [sic: Culver] Military Academy and during the middle of her junior year in high school she was transferred to that school where she graduated. All of her other siblings attended this same academy. Her oldest sister attended there when the school started to accept females. After she graduated, Mrs. Todd attended Colorado State University. She graduated with a Bachelor's Degree in Business Administration. After she completed her degree, Mrs. Todd moved to California where she worked as an assistant buyer. She was in this position for a year before being discharged for failure to meet job expectations. Mrs. Todd then went to work for another company as an [sic] marketing representative. She kept this position for two and a half years prior to being discharged for failure to meet sales expectations. During the time she was employed as a marketing representative, she attended night school and received her Master's Degree in Business Administration. Mrs. Todd worked several different jobs between 1982 to

1984 eventually realizing that she was not suited to traditional work environments. She indicated that she tends to be a perfectionist and she has difficulty with her interpersonal relationships with management. From that point on she has primarily pursued self employment. She has been able to do this because she has received money from inheritances. She has never made much money working on her own. Her ability to financially support the children is questionable because of her erratic work history and the little amount of money she has made working independently.

Mrs. Todd is compulsive. She has had problems with completing tasks because she becomes too overwhelmed with the details. In 1987. [sic] she went to see Charles Fuess, [sic] MD, psychiatrist, because she was having emotional problems around completing a work related project. Dr. Feuss reported that he diagnosed her at the time with Cyclothymia disorder which is a chronic mood disturbance. He tried her on a prescription of lithium for a period of time with little effect. He stated that her condition would cause her to have high and low energy levels. He did not believe that she needed to be on medication to control this condition. He did not believe that she had Bipolar disorder. He stated that he has not seen her in a long time. The distinction between Bipolar disorder and Cyclothymia are not well defined and it is sometimes believed that Cylcothymia is a mild form of Bipolar disorder. Both conditions have to do with disruptions in mood which affect social or occupational functioning. Dr. Feuss' impression was that Mr. and Mrs. Todd had very distinctly different personalities and that caused problems in their marriage. He indicated that Mrs.

Todd had very high energy levels and that she was out going [sic] and social whereas Mr. Todd was easily stress [sic] by social situations and that this caused conflicts between them.

Mrs. Todd's obsessive behavior appears to extend beyond the realm of the norm. Mrs. Todd is overly focused on the children's needs to the extent it could have a harmful effect on them. Older children need more flexibility and balance in their lives around educational and social issues. Mrs. Todd's inability to balance the children's needs as compared to meeting her own needs may become problematic if she is unable to be obsessive about them. Mrs. Todd should obtain counseling to help her establish a healthier balance between her life and the children's lives. Further she would benefit from counseling to address the divorce issues and help her move forward and make adequate judgments regarding her responsibilities concerning the children.

Mr. Todd, age forty one, was born in Cincinnati. He is the oldest child of three children. His father was a doctor and his mother was a housewife. Mr. Todd indicated that his father has been successful in his career and that he was able to provide well for his family. He indicated that his parents have been supportive of him. Mr. Todd denies any incidents of domestic violence or alcoholism in his family when he was growing up. His father is retired and he is living in his parents' home. His parents travel frequently and they have a summer home in Michigan. When Mr. Todd initially moved from the marital home to his parent's [sic] home, his parents were on an extended trip to Scotland. Therefore during a large part of the time the children have spent with their father, they have been

alone with him. Mr. Todd's sister lives in Cincinnati and she has helped with baby-sitting the children on Fridays when Mr. Todd is at work. Otherwise his parents and sister have been supportive of Mr. Todd but they haven't assumed the full time responsibility for caring for the children. Mr. Todd's mother indicated that when she is there he is still the primary caretaker.

Mr. Todd graduated from Western Hill [sic: Walnut Hills] High School. After graduation he planned on attending college. He attended Kenyan [sic: Kenyon] University and received his Bachelor's Degree in English. After graduation he worked for K-Mart as a manager trainee. He decided halfway through the program that he did not like working for K-Mart and he chose to return to school in the Fall. He was accepted at Case Western Reserve University and he completed his Master's Degree in Business Administration. After completing this degree, he got a job with a bank in the area and continued on with his education in completing a degree similar to a Doctoral in Information Systems. His parents were supportive financially through out [sic] his educational pursuit. After completing his educational pursuits he went to work for Federated Department Stores as an EDP Auditor. He worked for Federated until he was employed by Delottie [sic] and Touché [sic: Deloitte & Touche] as a computer consultant in EDP auditing. Mr. Todd was working for this company when he met and married Mrs. Todd. Mr. Todd was discharged by Delottie [sic] and Touché because of discrepancies in his expense accounts. After his discharge, it became difficult for him to find other employment. This is when he and Mrs. Todd started a business together. The stress of running his own business

was too overwhelming. **Mr. Todd started to avoid stressful situations by leaving the home and living out of his car. He escaped though [sic] reading science fictions [sic] books for days at a time neglecting his own needs and the needs of his family.**

Mr. Todd was seen by Dr. Feuss to address his emotional problems associated with the stress. Dr. Feuss reported that he initially saw Mr. Todd in 1987 and at that time he felt he was depressed. He again saw him in 1990 and he indicated he had the same symptoms of depression. He proscribed him Prozac for his depression with little effect. Dr. Feuss then saw Mr. Todd in 1992 when he stated Mr. Todd had completely different symptoms. Dr. Feuss reported that he presented with a panic disorder of fugue states. This is also known as a psychogenic fugue which is a disorder where there is sudden, unexpected travel away from home or customary work locale with assumption of a new identity and inability to recall one's previous identity. Mr. Todd was leaving home and being gone for long periods of time. He would then return looking disheveled. Dr. Fuess treated the symptoms with Zanax which is an anti-anxiety medication with significant success. He stated that Mr. Todd was seen again in 1993. His diagnosis of Mr. Todd was that he had Dissociative States with Reactions. He indicated that this is a type of neurosis which helped him handle stress. Dr. Fuess believed that Mr. Todd had a schizoid personality which is a disorder where there is a pervasive pattern of indifference to social relationships and a restricted range of emotional experiences. Dr. Fuess believed that Mr. Todd's personality was not compatible with Mrs. Todd's personality to cause extensive problems in the relationship. Dr.

Fuess further believed that if Mr. Todd continued to have fugue states he wouldn't be an appropriate caretaker for the children.

Mr. Todd was additionally seen by Clayton Gotwall, [sic: Gotwals] MD, psychiatrist, in June 1991. Dr. Gotwall provided his clinical notes which detailed Mr. and Mrs. Todd's relationship. He initially diagnosed Mr. Todd with major depression and a secondary diagnosis of personality disorder not otherwise specified. (See Attachment) Mr. Todd was seen by Dr. Gotwall after Mrs. Todd pleaded with his parents to seek treatment for him because he was suicidal. Mrs. Todd has indicated that she was never in treatment with Dr. Gotwall and she was not please [sic] with his care of Mr. Todd indicating that she felt he did nothing for him. Mrs. Todd was particularly upset that Dr. Gotwall hospitalized Mr. Todd without her knowledge. Dr. Gotwall related that Mr. Todd improved significantly with the hospitalization and treatment for depression. One of the significant problems mentioned by Dr. Gotwall was Mr. Todd's inability to assert himself with Mrs. Todd on any issue. He indicated that Mrs. Todd was critical, exceedingly controlling and directive in her behavior with Mr. Todd causing him to become increasingly depressed. Dr. Gotwall stated that Mr. Todd would become depressed because of Mrs. Todd's criticism and he would feel increasingly inadequate which would result in a downward spiral of depression that end [sic] up with him leaving the home. Dr. Gotwall hospitalized Mr. Todd without Mrs. Todd's knowledge because he believed that Mr. Todd needed a controlled environment in which to interact with Mrs. Todd. Focus of the therapy

with Mr. Todd included assertiveness training. Dr. Gotwell recommended that Mr. and Mrs. Todd participate in a Beech Acres parenting class to help them learn something about how to appropriately treat each other through learning how to appropriately care for their children. He hoped that this would teach them appropriate assertion and the avoidance of controlling intrusive behavior. Dr. Gotwall attempted to get Mrs. Todd to participate in marital counseling as a supportive therapy for Mr. Todd. He reported the difficulties he had working with Mrs. Todd and he mentions her having bipolar disorder. Dr. Gotwall indicated that he has not seen Mr. Todd since August 1991 and that he currently can not [sic] assess his capacity for child custody. (See Attachment) Mr. Todd contends that he has not had a single episode of fugue state since his separation and that his depression has gone away. Mr. Todd believes that his emotional problems were directly related to his stressful relationship with Mrs. Todd.

Mr. Todd still has a difficult time asserting himself with Mrs. Todd. He tends to avoid her instead of confronting her on issues. In order for him to affectively [sic] parent the children, he will have to learn to be [sic] challenge Mrs. Todd on significant issues regarding the children. His lack of assertion with Mrs. Todd maybe [sic] causing her to become even more excessive in her demands and obsessive in her behavior regarding the children. Mr. Todd should enter counseling to address why it is so difficult for him to confront Mrs. Todd regarding the children issues.

5. Physical environment

A home visit was conducted at Mr. Todd's residence in the Mt. Lookout area. Mr. Todd is residing in his parent's [sic] home. The home has three bedrooms and two and a half baths. The children have their own bedroom with twin beds and separate dressers. Mr. Todd has a separate bedroom in the same area. The home was adequately furnished. It had a large play area for the children. It was more than adequate in meeting the children's needs.

A home visit was conducted at Mrs. Todd's residence in the Hyde Park area. Mrs. Todd is residing in the marital home. The home has three bedrooms and two and half baths. The children have separate bedrooms. Mrs. Todd uses the third bedroom. The home was adequately furnished and it had a large play area for the children in the home and backyard. It was more than adequate in meeting the children's needs.

6. Caretaking arrangements

Mrs. Todd is not employed and she cares for the children when they are not in school. Mr. Todd has the children cared for by his mother or sister on Friday afternoons when he is working.

SUMMARY AND RECOMMENDATIONS:

Mr. and Mrs. Todd married in 1988. They have two children, Samuel, age six and Garrison, age four. The couple has been separated since December 1993. They are in the process of divorcing **but can not [sic] come to agreement**

on the payment of educational expenses and medical expenses. Mrs. Todd was named the temporary residential parent and Mr. Todd has visited with the children every Thursday evening overnight and every alternate weekend. The children have become adjusted to this schedule as Mr. and Mrs. Todd have followed it for the last two and a half years. The couple are in agreement with this parenting arrangement. **They are unable to agree as to who should pay for educational expenses and medical expenses.** Part of the problem has to do with Mrs. Todd's insistence that Mr. Todd is capable of paying these expenses. Mr. Todd denies that he has the financial where with all [sic] to pay these expenses in addition to the child support and spousal support he is providing. Both Mr. and Mrs. Todd have been told that it is not within my duties to make these determinations as to how property is divided. Further I have no information as to what moneys maybe [sic] available in trust to these children.

My impression is that Mrs. Todd is having difficulty finalizing the divorce because on some level she doesn't want the marriage to end. She is obsessing on issues regarding how the children's educational expenses will be paid because it continues to allow her control and interaction with Mr. Todd. The financial aspects of how the private school tuition will be paid is problem [sic] for Mrs. Todd. Mr. Todd is meeting his financial obligations.

Mr. Todd initiated the separation because he felt that the marriage was causing him severe emotional problems. He alleges his emotional problems have significantly improved since the separation. A major problem during the marriage was Mr. Todd's inability to confront Mrs.

Todd's critical and demanding behavior. He still had difficulty confronting her and he tends to avoid her instead of being upset by her behavior. His inability to confront Mrs. Todd is an ongoing problem and will continue to cause problems. Mr. Todd should enter counseling to help him be more assertive with Mrs. Todd.

I am recommending a shared parenting arrangement in which Mr. and Mrs. Todd continue to follow the schedule they have set up. The children are adjusted to this schedule and both parents have indicated that it is a [sic] workable for them. **Essentially Mr. and Mrs. Todd have been in agreement with most issues regarding the children except financial obligations.** I have attached a shared parenting plan as an example.

/s/ Leslie Duncan, MSSW
Leslie Duncan, MSSW
Parenting Specialist
June 4, 1996

PARENTING SPECIALIST

SOURCES OF CONTACT

Interviews:

February 16, 1995	Mr. and Mrs. Todd, Mediation Assessment and Referral
March 28, 1996	Mr. and Mrs. Todd
April 22, 1996	Mr. and Mrs. Todd
May 16, 1996	Mr. Todd
May 16, 1996	Mrs. Todd
May 17, 1996	Home Visit, Mr. Todd
May 20, 1996	Mr. and Mrs. Todd, Samuel and Garrison
May 22, 1996	Home Visit, Mrs. Todd

Phone Contacts:

February 13, 1995	Mrs. Todd
November 2, 1995	Mrs. Todd
March 14, 1996	Mr. Todd
April 10, 1996	Mrs. Todd
May 1, 1996	Charles Fuess, MD
May 10, 1996	Charles Fuess, MD

Reports:

November 8, 1995	Mediation Assessment From Bea Larsen, J.D.
April 10, 1996	Witness questionnaire, Emily Todd
April 11, 1996	Hamilton County Sheriff's Report
April 15, 1996	Witness Questionnaire, Elle Stefanie
April 22, 1996	Parent Questionnaire, Mr. Todd
April 22, 1996	Witness Questionnaire, LaVaughn Bardes
April 25, 1996	Witness Questionnaire, Karen Pohl
May 8, 1996	Statement and Clinical Notes From Clayton Gotwall, MD
May 16, 1996	School Questionnaire, Karen Pohl
May 16, 1996	School Questionnaire, Karen Pohl
May 16, 1996	Parent Questionnaire, Mrs. Todd
May 16, 1996	Additional Information Received From Mrs. Todd

T.d. 201

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'Ellen Bardes	:	Case No: DR9402798
SS# 270-52-9846	:	File No: E 194749
DOB:	:	CSEA AA# 89964/01
Plaintiff	:	**MAGISTRATE'S DECISION WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW**
-vs-	:	
Samuel Pogue Todd, III	:	Judge: Cunningham
SS# 293-56-1656	:	
DOB: 01/04/54	:	
Defendant	:	

(ENTERED AUG. 29, 1998)

A hearing for the determination of all [sic: App. 146, # 1; App. 153] issues except the merits in the above case was held on May 15, 1997, July 31, 1997, October 24, 1997 & December 18, 1997. Magistrate William L. Murphy, Domestic Relations Division of the Common Pleas Court, heard this matter in accordance with Rule 53 of the Ohio Rules of Civil Procedure. Present at the hearing were Wife who appeared pro se and Husband with Attorney William S. Abernethy, Jr. Based upon the evidence presented, the arguments and the law, the following is issued:

FINDINGS OF FACT

1. The parties were married on May 26, 1988, with two children born issue of their marriage: Samuel, born

February 19, 1990; and Garrison, born September 26, 1991. The parties separated in December 17, 1993 and Wife filed for divorce on August 31, 1994. A Temporary order regarding child support and spousal support was issued December 12, 1994. Prior to the temporary order, Husband was paying to Wife $900.00 per month in family support. The duration of the parties marriage will be determined to be from May 26, 1988 to December 17, 1993, pursuant to Defendant's exhibit #11, wherein Wife states the marriage had ended. The length of the parties marriage therefor [sic] is 5 years, 7 months.

2. The parties entered [sic: court ordered, App. 146, # 2, @ App. 254; App. 136] into a shared parenting plan, with the following issues unresolved and left to the Court: child support, educational expenses, health insurance/medical expenses, life insurance, [sic: deleted @ App. 146, # 3] cost of children's activities, post-high school expenses and allocation of the tax dependency exemption [sic: deleted @ App. 146, # 3] of the minor children. The issue of post-high school expenses is to be heard by Judge Cunningham.

3. The parties resolved all property issues by agreement, except for the issue of spousal support which is left to the Court to decide.

CHILD SUPPORT

4. Wife is currently unemployed. She has had [sic] not been employed other than through a self owned and operated business either on her own, or with Husband since 1984, except for one month with the IRS in 1991 and for a semester plus 2.5 weeks with U.C. in 1988. Her last full time employment by a outside employer was in

1983-1984, when she was employed by U.S. West, where she had annualized earnings of $30,000.00. Pursuant to her tax returns in 1994, 1995 & 1996, Wife had no earned income from wages, salaries, or tips. In 1997, Wife had no earned income from wages, salaries, or tips. In 1995, Wife had interest and dividend income of $10,737. In 1996, wife had interest and dividend income of $11,129.00. This interest and dividend income is obtained from Wife's separate stock, with a market value of $838,694.00, [sic: corrected at App. 139 to $710,706.00] as of October 24, 1997. This value is prior to any taxes or sales commissions that would have to be paid if these assets were liquidated.

For the years 1994 through 1996, Wife had not submitted any formal job applications. Wife's only pursuit of work was through trying to obtain contracts with employers and pursuing writing articles through contract employment. Wife is a skilled computer operator and her employment throughout her career has been primarily in the computer field. Currently, Wife is attending paralegal school. Both of the parties children are attending school on a full time basis. Wife has no health problems that would prevent her from obtaining and maintaining employment. For the purpose of determining the appropriate amount of child support in this matter, the Magistrate will impute to her income equal to a full time minimum wage job, which equals a gross annual income of $10,920.00, which will be combined with her interest and dividend income of $11,129.00, which will give Wife total income of $22,049.00. Wife presented no evidence that she has any day care expense.

5. Husband is currently employed by Ross Sinclair [sic: Sinclaire] & Associates. He is paid $50,000.00 gross per year for 1,000 hours of work. As of October 24, 1997, Husband anticipated generating an additional $20,000.00 in income per year as an independent contractor with Ross Sinclair and other contract work. On November 10, 1997, Husband signed an employment contract with his previous employer Computer Horizons working part time on a project they have with Proctor [sic] & Gamble. This project was supposed to run through April, 1998 and Husband anticipated earning between $50,000.00 and $60,000.00 from this employment. In past years, Husband has earned money form [sic] moonlighting in addition to his regular employment. In 1995 he had moonlighting income of $13,721.00. In 1996, he had moonlighting income of $21,443.00. The average of these two years is $17,582.00. By taking the possible $60,000.00 Husband anticipates earning from Computer Horizons in 1997 and 1998, the average moonlighting income Husband would have over the last four years would be $23,791.00. This amount of income will be added to Husband's base income and his interest and dividend income of $1,926.00 to arrive at his income for purposes of determining child support, which totals $75,717.00. Husband has no [sic: no earned, at App. 239, #a] income from any other source. Husband has daycare expenses of $575.00 per year and his cost for providing health care for the parties children is $1,301.00 per year.

Using these income figures, the amount of child support Husband would be required to pay would be $499.71 per month, per child.

HEALTH CARE INSURANCE/MEDICAL EXPENSES

6. Pursuant to the parties shared parenting plan, Husband will provide health insurance for the parties minor children. The parties could not agree on how unreimbursed medical expenses for the children should be paid. No particular evidence was submitted by either party, as to why the Court's standard order for the payment of unreimbursed medical expenses should not be used in this case. Wife would prefer that the unreimbursed medical expenses be divided with her paying 25% and Husband paying 75%. Wife would also prefer that any speech therapy costs for Garrison be treated differently than other medical expenses. The parties stipulated to the speech therapists' report and stipulated [sic] and Husband stipulated that he would assist in home therapy for Garrison.

COST OF CHILDREN'S ACTIVITIES

7. The parties could not agree on how to pay for the cost of the children's extracurricular activities. The parties did not present any particular evidence as to how they would like these expenses divided, other than the general financial evidence that was supplied.

EDUCATIONAL EXPENSES

8. The parties stipulated that their children are gifted [sic: highly gifted, T.p. 143, p. 4, ll. 12-17, amended @ T.p. 167, p. 5, ll. 4-9, reaffirmed @ T.p. 238, p. 40] children and as gifted children it would be better for them to attend a private school, such as Summit, as opposed to going to public school. It was further stipulated that the children are currently attending Summit

Country Day school and are doing well in school. Wife believes that the parties should share in the cost of sending the parties children to private school through college. The issue before the Magistrate is whether or not the parties should share in the cost of private education through high school and if so, how that cost should be divided. Husband is not adverse to sharing in the cost of private school for the parties children, but claims he cannot afford to do so at this time. Currently the cost of sending both children to Summit is $7,905.00 per child, per year, or $15,810.00 annually. Wife has continuously had the children enrolled in Summit and has utilized money from her mother to help in the tuition costs and other costs associated with sending the parties children to Summit. Wife intends to pay her mother back the tuition money her mother has paid. This total is approximately $54,431.50.

Wife believes that the parties entered into an agreement during their marriage to send their children to private school and that therefore that agreement should be enforced by order of this Court. Wife's basis for this argument is the spreadsheets the parties prepared in 1991 to project the cost of private school tuition for the minority of their then 1 year old son, i.e., Wife's exhibit I. At the time, the parties had a total income of $27,769.00. In fact in 1991 when this spreadsheet was created, Husband was unemployed and receiving unemployment benefits. In 1992, the parties had an income of $14,157.00 before deducting losses. In 1993, the parties had an income of $14,478.00 before deducting losses. The projected cost for the education of one child was between $80,370.00 and $104,272.45, through high school. Wife

testified that the parties anticipated liquidating assets to pay for the tuition, if their income did not rise to the level to meet these expenses. Husband denied any agreement to send the children to private school. The only marital money spent on the children's private schooling was money spent prior to August 15, 1993 [sic: oral stips. @ T.p. ___] to enroll Samuel [sic: both sons, @ T.p. 190, p. 118, ll. 9-24] in Summit Montessori. [sic: App. 182 evinces two private preschools prior to Summit with marital payment @ P.'s Exh. 1, 10/24/97, T.p. 186] Since that time, Husband has refused to contribute any money to the payment of tuition for the parties children to attend private school. In fact when Wife sent him a bill for tuition in August, 1994, Husband returned the bill with "not my bill", written on the bill. There was no evidence presented to show that the parties entered into any agreement to send the parties children to private school. The evidence only reflects that the parties desired to send their children to private school and would do so if they could afford the tuition.

Wife's second basis for requesting that Husband contribute to the private school tuition of their children is that based on the parties privileged upbringing, which included private schooling, **their children have a right to the same privilege**. There is no legal basis to this argument. There is no "right" to attend private school based upon a parents having attended a private school, or the fact that a parent was raised in an environment that included the financial ability to send the parent to a private school. **The only standard that will be applied by the Court is whether or not the parties have the financial resources available to send their children to**

private school. Wife has already indicated her willingness to send the parties children to private school currently, so Husband's finances will be examined to determine whether or not he has the current ability to contribute to the cost of private tuition.

Husband's gross annual income has already been established at $75,717.00. The parties stipulated [sic: mathmatical stip. only, App. 127-129, 132, 148, # 5] that based on Husband's net income after taxes on a gross income of $76,371.00 per Defendant's exhibit #26 and payment of child support, day care and premiums for health insurance for the children, Husband has disposable income of $179.00 per month. This equals net disposable income of $2,148.00 per year. Based on these numbers and with private school tuition costing over $15,000.00 per year, it is not appropriate at this time to order Husband to contribute to the cost of private school tuition. In addition, **with the finding that there is no agreement between the parties to send the children to private school, Husband will not be ordered to contribute to the tuition expenses already incurred by Wife sending the children to private school, as absent any agreement to do so,** Wife has made the decision to send the parties children to private school on her own [sic: App. 39, # 9.2; App. 182-184; App. 215, 219, 178; T.d. 23, p. 1, # 1] and she will be solely responsible for the cost.

In addition, there are funds on deposit in custodial accounts for each of the parties children, that the parties stipulated could be used for **the parties education expenses.** As of December 14, 1997, each of the children's' accounts had balances of over $17,400.00. Wife's

mother funds these custodial accounts with approximately $4,000.00 per year per child. Wife spends about $6,000.00 of the $8,000.00 per year.

TAX DEPENDENCY EXEMPTIONS [sic: section stricken @ App. 146, # 4]

9. No evidence was presented on this issue, as to the benefit of the exemptions for either party. The Magistrate will divide the exemptions between the parties.

SPOUSAL SUPPORT

10. In order to determine whether or not spousal support should be ordered in this matter and if so, for how long and in what amount, the Magistrate will apply the relevant factors contained in O.R.C. 3105.18:

a. *The income of the parties, from all sources, including, but not limited to income derived from property divided, disbursed, or distributed under Sec. 3105.171:* As previously stated in this decision, Wife is currently unemployed, but she will have imputed to her minimum wage income for a full time job, which is $10,920.00 gross per year. In addition, Wife has interest and dividend income of $11,129.00 per year, from her separate assets, which had a market value of over $800,000.00 as of the property hearing. Husband has earned income of $73,791.00 gross per year and interest and dividend income of $1,926.00 per year, for a total gross annual income of $75,717.00. He has no other source of income;

b. *The relative earning abilities of the parties:* In her last full time outside employment, Wife earned an annualized income of $30,000.00. During her time in running her own business and businesses with Husband, she

never showed the ability to earn that much income. Wife is currently obtaining a paralegal degree and anticipates obtaining employment upon completion of this degree, paying approximately $20,000.00 per year. Husband currently earns $73,791.00 gross per year. Based upon this evidence, it is clear that Husband has a greater earning ability currently, than Wife;

c. *The ages and the physical, mental, and emotional conditions of the parties:* Wife was born July 21, 1956 and is 42 years old. Pursuant to the evidence, Wife is in good health and suffers from no disabilities. Husband was born October 9, 1954 and will soon be 44 years old. Pursuant to the evidence, Husband is in good health and suffers from no disabilities.

d. *The retirement benefits of the parties:* The parties divided their [sic: husband's, @ App. 146, # 5] retirement benefits between them. No evidence was presented as to the amount of these benefits.

e. *The duration of the parties marriage:* It has already been established that the parties were married for 5 years, 7 months.

f. *The extent to which it would be inappropriate for a party, because he will be custodian of a minor child of the marriage, to seek employment outside the home:* This factor is not relevant, as both of the parties children are attending school on a full time basis. Wife would have the ability to obtain and work at a full time job outside the home.

g. *The standard of living the parties established during the marriage:* The parties had a very nice standard of living during their marriage, but that was due mainly

to gifts that Wife's mother and grandmother made to the parties. The parties themselves never earned enough money during their marriage to sustain the lifestyle they lived.

h. *The relative extent of education of the parties:* Both parties have received very good education's [sic]. Wife has a Bachelor of Science in Business Administration from Colorado State University and a Master of Business Administration from Golden Gate University. Husband has a Bachelor of Arts degree from Kenyon College, a Master of Business Administration from Case Western Reserve and a Certificate in Advanced Proficiency Management in Information and Decision Systems. This certificate is like completing a doctorate degree without doing a thesis.

i. *The relative assets and liabilities of the parties, including but not limited to any court-ordered payments by the parties:* Wife has current assets totaling over $800,000.00, including her separate stock, equity in her residence and a payment of $4,987.77 due her by Husband. Wife's actual current liabilities total approximately $55,000.00. Wife included many future possible expenses in her summary of liabilities, such as law school tuition, repairs to her residence, etc., but those are only possible not actual expenses, as Wife has not been accepted into law school and the repairs to the residence were for it to be ready for sale, but Wife has no intention of selling the property at this time. Husband has total assets of $80,176.00 and total liabilities of $45,743.00. Husband at some future date will be the beneficiary of some trusts that may bring him substantial assets, but currently he has no interest in those trusts.

j. *The contribution of each party to the education, training, or earning ability of the other party, including, but not limited to, any party's contribution to the acquisition of a professional degree of the other party:* The parties completed their formal education prior to the parties marriage. During their marriage, Wife helped Husband to improve his computer skills, which has enabled him to increase his ability to earn income.

k. *The time and expense necessary for the spouse who is seeking spousal support to acquire education, training, or job experience so that the spouse will be qualified to obtain appropriate employment, provided the education, training, or job experience, and employment is in fact sought:* Since the parties separation on December 17, 1993, Wife has done very little to pursue either training or employment. In 1997, Wife enrolled in paralegal school. She expects to complete the school in late 1998, or in 1999. As of the hearing on July 31, 1997, Wife had 1½ years of schooling left. Her cost for schooling is $177.00 per month. Wife also included evidence of her cost to attend law school, but as of the end of the property trial Wife had not been accepted into law school, so there is no guarantee that Wife would incur this cost. Even if she did attend, it is not mandatory training for her to obtain employment. Wife is a skilled computer operator and if she chose to attend law school, it would be a strictly voluntary expense.

l. *The tax consequences, for each party, of an award of spousal support:* The Magistrate takes judicial notice that any award of periodic spousal support to Wife from Husband, would be taxable income to Wife and a tax

deductible to Husband. Neither party provided any specific evidence on the tax ramifications such an award would have on the parties.

m. *The lost income production capacity of either party that resulted from that party's marital responsibilities:* No evidence was presented to show that either party had a decrease in their income production capacity due to their marital responsibilities.

n. *Any other factor that the court expressly finds to be relevant and equitable:* In deciding whether or not spousal support should be paid in this matter, the Magistrate considered the living expenses of each part [sic] as shown by their testimony and exhibits. In addition, the Magistrate considered the fact that the parties marriage terminated in December, 1993 and Husband has been paying support to Wife since that date including court ordered temporary spousal support since December 12, 1994, a period of 3 years 8 months as of the writing of this decision.

COURT COSTS

11. The parties stipulated to the payment of court costs. [sic: through May 5, 1997, @ App. 146, # 6].

EXHIBITS

12. Wife's exhibits A through S and U and 1 through 13 and 15 through 19, were admitted and are incorporated herein. Wife's exhibits T and 14 were not admitted. Husband's exhibits 1 through 7, 11 through 25, 27 through 32 were admitted and are incorporated herein.

Husband's exhibit 26 was admitted over Wife's objections and is incorporated herein. Husband's exhibits 8, 9, & 10 were withdrawn.

CONCLUSIONS OF LAW

The law to be applied regarding spousal support is contained in O.R.C. § 3105.18. In considering the property division issues, O.R.C. § 3105.171 is pertinent. The starting point for division of property is an equal division. *Cherry v. Cherry,* (1981), 66 O.S. 2d, 348 421 N.E. 2d 1293.

O.R.C. § 3109.05, § 3113.21, § 3113.215 and § 3113.217 et. seq. are relevant in setting child support. In determining the allocation of parental rights and responsibilities and visitation, O.R.C. § 3109.03, O.R.C. § 3109.04, O.R.C. § 3109.041, § 3109.051 and § 3109.22 are taken into account.

DECISION

1. Father shall pay support in the amount of $499.71 per month per child plus a 2% processing charge, payable through The Division Of Child Support Of The Department Of Human Services Agency for the parties' children. This order is effective September 1, 1998 and is payable monthly in the total amount of $1,19.41 [sic], including the processing charge. Notwithstanding section 3109.01 of the Revised Code, the parental duty of support to children, including the duty of a parent to pay support pursuant to a child support order, shall continue beyond the age of majority as long as the child continuously

attends on a full-time basis any recognized and accredited high school **or a court-issued child support order provides that the duty of support continues beyond the age of majority**. Except in cases in which a child support order requires the duty of support to continue for any period after the child reaches age nineteen, the order shall not remain in effect after the child reaches age nineteen. That duty of support shall continue during seasonal vacations. Father is responsible for making payments directly to The Division Of Child Support Of The Department Of Human Services Agency until such time as a deduction order takes effect. Any payment made directly to the residential parent and not through the Hamilton County Support Enforcement Agency shall be deemed a gift and not credited to the support account.

2. Father shall maintain health insurance for the parties' children. **A Qualified Medical Child Support Order shall issue. This order shall remain in effect for each minor child until that child reaches the age of eighteen (18) and no longer attends an accredited high school on a full-time basis unless otherwise ordered.** The residential parent and legal custodian [sic: Mother, @ App. 147, # 7] shall pay the first $100.00 per calendar year per child for all uninsured medical, dental, hospital, prescriptions, optical, psychological, psychiatric and orthodontic expenses. The remaining costs of these uninsured costs shall be shared equally between the parties.

3. [sic: # 3 stricken, @ App. 147, # 8] The nonresidential parent shall be entitled to use the parties' oldest child as a tax exemption so long as the nonresidential parent is substantially current in child support payments for the year in which there is a desire to use the child for

tax exemption purposes. The residential parent and legal custodian shall be entitled to use the parties' children for tax exemption purposes in all other instances. The residential parent shall sign any documents necessary to effect this order. This paragraph is only effective while the parents have a legal obligation to support the child to whom it refers. The awarding to the nonresidential parent of some tax benefit furthers the interests of the parties' children by encouraging the nonresidential parent to be totally current in support payments and so that the nonresidential parent will, from time to time, have extra discretionary funds to spend on the parties' children.

4. Until further order of the Court, Husband shall not be required to contribute to the cost of private elementary, or secondary education of the parties children.

5. The cost of the parties children's' extracurricular activities shall be divided equally between the parties for those activities in which the parties agree, that the children should participate. If the parties disagree on the children participating in an activity, either parent may enroll the children in that activity, but the parent enrolling the children in the activity shall be responsible for 100% of the cost of that activity.

6. Neither party shall pay spousal support/alimony to the other. The temporary order of spousal support shall be terminated effective September 1, 1998. Any arrearage due on the temporary spousal support order shall be preserved in the parties decree of divorce.

7. The parties agreed entries and stipulations regarding property are incorporated herein for all purposes.

Copies of this Decision have been mailed to the parties or their counsel. Objections to this Magistrate's Decision must be filed within fourteen days of the filing date of the Magistrate's Decision.

/s/ William L. Murphy
Magistrate
William L. Murphy 08/19/98

Copies sent by Clerk of Courts to:
D'Ellen Bardes, Pro Se Plt
1035 Paxton Avenue
Cincinnati, Ohio 45208
William S. Abernethy, Jr., Esq. DEF.

ENTRY ADOPTING MAGISTRATE'S DECISION

Pursuant to Civil Rule 53, the Court hereby adopts the Magistrate's decision. The filing of timely written objections to the Decision shall operate as an automatic stay of the execution of this judgment until the Court disposes of those objections and thereby vacates, modifies, or affirms the judgment previously entered.

/s/ Penelope R. Cunningham cs
Judge Court of Common Pleas
Division of Domestic Relations

[Petitioner's Note: Magistrate's Decision, App. 231-App. 247, was amended inter alia @ App. 139; 146-147; T.p. 190, p. 118; was adopted except as otherwise ordered, @ App. 150, last para.; App. 69, # 2.]

Worksheet
Hamilton County Domestic Relations Court
Child Support Computation
Sole Residential Parent or Shared Parenting Order

Name of Parties: BARDES
Case No. A /DR DR9402798

Mother is residential parent
Mother has 12 pay periods/yr
Father has 12 pay periods/yr

Number of minor children : 2

	COLUMN I FATHER	COLUMN II MOTHER	COLUMN III COMBINED
1.a Annual gross income from employment OR, when determined appropriate by the court or agency, average annual gross income from employment over a reasonable period of years (exclude overtime and bonuses	$50,000	$10,920	
1.b Amount of overtime and bonuses:			
FATHER: YR 3 $	$0		
YR 2 $	$0		
YR 1 $	$0		
AVERAGE	$0		
Lesser of 3 year average or year 1	$0	$0	
(Include in Column I and/or Column II the average of the three years or the year 1 amount, whichever is less. IF THERE EXISTS A REASONABLE EXPECTATION THAT THE TOTAL EARNINGS FROM OVERTIME AND/OR BONUSES DURING THE CURRENT CALENDAR YEAR WILL MEET OR EXCEED THE AMOUNT THAT IS THE LOWER OF THE AVERAGE OF THE THREE YEARS OR THE YEAR 1 AMOUNT. IF, HOWEVER, THERE EXISTS A REASONABLE EXPECTATION THAT THE TOTAL EARNINGS FROM OVERTIME/BONUSES DURING THE CURRENT CALENDAR YEAR WILL BE LESS THAN THE LOWER OF THE AVERAGE OF THE THREE YEARS OR THE YEAR 1 AMOUNT, INCLUDE ONLY THE AMOUNT REASONABLY EXPECTED TO BE EARNED THIS YEAR.)	$50,000	$10,920	
2 Annual income from interest and dividends (whether or not taxable)	$1,928	$11,129	
3 Annual income from unemployment compensation	$0	$0	
4 Annual income from workers' compensation or disability insurance	$0	$0	
5 Other annual income (identify)	$23,791	$0	
6 Total annual gross income (add lines 1-5)	$75,717	$22,049	
7 Annual court-ordered support paid for other children	$0	$0	
8 Adjustment for minor children born to either parent and another parent, which children are living with this parent (number of children times federal income tax exemption less child support received for the year, not to exceed the federal tax exemption)	$0	$0	
9 Annual court-ordered spousal support paid to a former spouse	$0	$0	
10 Amount of local income taxes actually paid or estimated to be	$1,550	$0	
11 For self-employed individuals, deduct 5.6% of adjusted gross income or the actual marginal difference between the actual rate paid by the self-employed individual and the F.I.C.A. rate	$0	$0	
12 For self-employed individuals, deduct ordinary and necessary business expenses	$0	$0	
13 Total gross income adjustments (add lines 7-12)	$1,550	$0	
14 Adjusted annual gross income (subtract line 13 from 6)	$74,167	$22,049	
15 Combined annual income that is basis for child support order (add line 14, Col. I and Col. II)			$96,215
16 Percentage of parent's income to total income:			
a. Father (divide line 14, Col. I by line 15, Col. III)	77.08%		
b. Mother (divide line 14, Col. II by line 15, Col. III)		22.92%	= 100%

ENTERED
AUG 2 7 1998
IMAGE 193

App. 248

BEST AVAILABLE COPY

	COLUMN I FATHER	COLUMN II MOTHER	COLUMN III COMBINED
17 Basic combined child support obligation (Refer to basic child support schedule in division (D) of section 3113.215 of the Revised Code; in the first column of the schedule, locate the sum that is nearest to the combined annual income listed in line 15, Col. III of this worksheet, then refer to the column of the schedule that corresponds to the number of children in this family. If the income of the parents is more than one sum and less than another sum in the first column of the schedule, you may calculate it a basic combined child support obligation based upon the obligation for those two sums).....			
18 Annual child care expenses that are work, employment training, or education related, as approved by the court or agency (deduct the tax credit from annual cost, whether or not claimed).....	$575	$0	
19 Marginal, out-of-pocket costs, necessary to provide for health insurance for the children who are the subject of this order.....	$1,301	$0	
20 Total child care and medical expenses (Add lines 18 and 19, Col. I and II).....	$1,761	$0	
21 Combined annual child support obligation for this family (Add lines 17 and 20, Col. I and II).....			$17,843
22 Annual support obligation/parent:			
a. Father (multiply line 21, Col. III, by line 16a).....	$13,754		
b. Mother (multiply line 21, Col. III, by line 16b).....		$4,089	
23 Adjustment for actual expenses paid for annual child care expenses and marginal, out-of-pocket costs, necessary to provide for health insurance (enter number from line 18 or 19 if applicable).....	$1,761	$0	
24 Actual annual obligation (Subtract line 23 from Line 22a or 22b	$11,993	$4,089	
25 Gross household income per party after exchange of child support (add lines 14 and 24, Col. I or II for residential parent or, in the case of shared parenting order, the parent to whom child support will be paid; subtract line 24 Col. I or II from line 14 for parent who is not the residential parent or, in the case of shared parenting order, the parent who will pay child support).....	$62,174	$34,042	
26 Comments, rebuttal, or adjustments to correct figures in lines 24, Col. I and 24, Col. II if they would be unjust or inappropriate and would not be in best interest of the child or children (specific facts to support adjustments must be included).....	$0	$0	

ENTERED
AUG 2 7 1998
IMAGE 494

082

27 Final figure (this amount reflects final annual child support obligation)..... Father $11,993.07 is Obligor

28 For Decree: child support per month per child (divide obligor's annual share, line 27, by 12 and by number of children)..... $499.71

29 For deduction order: child support per pay period (calculate support per pay period from figure on line 28) plus appropriate processing charge..... $1,019.41

Calculations have been reviewed.

Signatures:

_____
Father - (I do/do not consent)
Sworn to before me and subscribed in my presence this ____day of _____, 19____

_____
Notary Public

_____
Mother - (I do/do not consent)
Sworn to before me and subscribed in my presence this ____day of _____, 19____

_____
Notary Public

_____ _____
Attorney for Father Attorney for Mother

T.d. 189

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'Ellen Bardes	:	Enter Cunningham, J.
Plaintiff	:	Date 1/23/1998
270-52-9846 7/21/56	:	Case No. A/DR
DOB	:	DR 94-02798
	:	File No. E
-vs/and-	:	CSEA NO. AA/AB
Samuel P. Todd III	:	JUDGE CUNNINGHAM
Defendant	:	**ENTRY**
293-56-1656 10/9/54	:	
DOB	:	

1. Plaintiff's Motion for Extension of Time, filed 1/15/1998 is hereby granted, with Closing Arguments now due at 4:00 p.m. on Mar. 18, 1998. /s/ DB, WA ~~The issues of college education expenses are not to be raised or included in such Closing Arguments as~~ The Judge has agreed to take the issues relating to college expenses under advisement.

2. Plaintiff's Motion for Declaratory Judgment filed 12/10/97 shall be set on the Judge's docket for a three hour oral argument on the law only. Such Motion shall be heard at the same time as the Objections to Magistrate Murphy's Decision on Child Support.

3. The issues of college education expenses shall not be included in such closing arguments.

/s/ William S. Abernethy
Attorney for Defendant

/s/ D Bardes
Plaintiff/Pro Se
1/26/98

T.d. 149

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'ellen Bardes SS#: 270-52-9846 DOB: 7/21/56 Plaintiff -vs- Samuel Pogue Todd III SS# 293-56-1656 DOB: 01/04/54 Defendant	)	Case No: DR 9402798 File No: E 194749-0-7 CSEA AA# 89964/01 **MAGISTRATE'S ORDER** Judge: Cunningham

ORDER

(FILED JUL. 17, 1997)

1. The deadline for the parties to file their proposed findings of fact and conclusions of law for Judge Cunningham's parenting decision, is extended by agreement of the parties to August 15, 1997.

2. The Plaintiff's motion for continuance of the July 31, 1997, property trial is denied.

3. The Plaintiff's motion to determine jurisdiction re: college expenses, is dismissed, as this matter is more appropriately addressed in the property trial. **This is not a decision on the issue of whether or not this court has jurisdiction over the issue of college expenses.**

Copies of this order have been personally given to/ mailed to the parties or their counsel. This Order is

effective immediately. Either party may appeal this order by filing a Motion to Set the Order Aside within ten days of the date this order is entered. The pendency of a Motion to Set the Order Aside does not stay the effectiveness of this order unless the Magistrate or Judge grants a stay.

/s/ William L. Murphy
Magistrate William L. Murphy
07/17/97

Copies sent by Clerk of Courts to:
D'ELLEN BARDES, PRO SE
WILLIAM S. ABERNETHY, JR., ESQ.

T.d. 140

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES	:	Case No. DR 9402798
	:	File No. E-194749-0-7
Plaintiff	:	**DECISION**
-vs-	:	**ALLOCATING**
SAMUEL POGUE TODD III	:	**PARENTAL RIGHTS AND RESPONSIBILITIES**
Defendant	:	Judge Cunningham
	:	(FILED MAY 23, 1997)

The above captioned matter came before the Court for trial on the merits of the pre-decree allocation of parental rights and responsibilities for the parties' two minor children, to wit: Samuel Pogue Todd IV, born February 19, 1990 and Garrison Todd, born September 26, 1991.

Based upon the evidence and testimony presented and in full consideration of the statutory provisions of O.R.C. Section 3109.04 as well as the applicable case law, the Court finds that shared parenting is in the best interest of the minor children. The Court will accept Father's Shared Parenting Plan as filed on January 7, 1997 with the following modifications:

1. The financial issues of child support, **educational expenses**, health insurance/**medical expenses**, life insurance, cost of children's activities, **post-high school expenses and allocation of the tax dependency exemption** for the minor

children shall be referred to the assigned Magistrate for hearing and disposition unless the parties are able to agree in writing as to the resolution of said issues.

2. Removal of Children From the Court's Jurisdiction: See Section 3.2 on Page 8 of Father's Plan. The Court requires the following modification **unless the parties agree otherwise in writing**: The parties recognize that if either of them should move from this jurisdiction, it will necessarily require a modification or termination of this Plan. Neither party shall remove the minor children from Hamilton County or its contiguous Ohio counties and establish residence for them in another county without a Court order or an agreement signed by the parties and filed with the Court.

3. Medical Decision: See Section 11.5 on Page 14 of Father's Plan. The Court requires the following modification unless the parties agree otherwise in writing: Except in the case of routine visits and emergencies, all major decisions regarding the children's medical, dental, orthodontic, optical, psychological, psychiatric, pharmaceutical drugs and hospital or physical care, attention or treatment shall be jointly made by the parties following consultation between them and in collaboration with the health care provider. In the event the parties are unable to agree, Mother shall determine the need for said care, attention and/or treatment. Father will be entitled to a second opinion at his expense.

Except as noted otherwise herein, all other provisions of Defendant/Father's Shared Parenting Plan are found to be in the best interest of the minor children. **Upon**

Defendant/Father's submission of the above noted modifications and following hearing and disposition of the financial issues referenced above by the assigned Magistrate, the Court will accept and adopt Defendant/Father's Plan as the Court's Order of Allocation of Parental Rights and Responsibilities.

IT IS SO ORDERED

/s/ Penelope R. Cunningham
Judge Penelope R. Cunningham
May 23, 1997

c: William S. Abernethy, Esquire
Dee Ellen Bardes, Plaintiff

APPENDIX B1

G.O.P. Mailing Touts Clerk's Website

[SEAL] ABOUT THE CLERK
Jim Cissell • Clerk of Courts Hamilton County, Ohio

Top 10 Award
[LOGO] JUSTICE
SERVED
www.justiceserved.com

Justice Served Named
www.courtclerk.org
#1 website

AS CLERK OF COURTS JIM CISSELL HAS:

- Totally modernized the Clerk of Court's office.
- **www.courtclerk.org named America's #1 court web site (now getting 2.4 million hits per month).**
- Finalist in Smithsonian Computerworld Awards (others were GTE, Lucent Technologies, the Federal Reserve Board and the FDIC) for the country's most advanced court computer system.
- Established three suburban offices open until 6:00 p.m. for the public's convenience.
- Published various court information guides including *Small Claims Guide, How to Obtain a Passport* and *How to Secure an Auto Title.*
- Honored by "Mothers Against Drunk Driving."
- Returned savings of millions of dollars to the County treasury, some of which were used to fund a domestic violence task force and help fund video cameras for 17 local police departments.

(<Credentials *continued* on next page>)

G.O.P. Mailing Attest To
Clerk of Court's High Profile

NO ONE MATCHES JIM CISSELL'S BACKGROUND AND EXPERIENCE:

- President of the Ohio Clerk of Courts Association.
- Member of the Ohio Bicentennial Commission.
- Member of the Ohio Courts Futures Commission.
- Member of the Ohio Supreme Court Advisory Committee on Technology and the Courts.
- United States Attorney, Southern District of Ohio.
- President-elect, National Association of Former U.S. Attorneys.
- Author of *Federal Criminal Trials* and *Ohio Oil and Gas Law.*
- Listed in *Who's Who in America* and *Who's Who in American Law.*
- Graduate of both Xavier University and the University of Cincinnati College of Law.
- Attended Ohio State University as a Ford Foundation Fellow.

JIM CISSELL for CLERK OF COURTS

Jim Cissell
for CLERK OF COURTS [SEAL]
Ohio Republican Party
211 S. 5th Street
Columbus, Ohio 43215

APPENDIX C

The Supreme Court of Ohio

Dee Ellen Garrison Bardes, Appellant,	:	**Case No. 00-2117**
	:	**ENTRY**
v.	:	
	:	
Samuel Pogue Todd III, Appellee.	:	
	:	

(FILED DEC. 20, 2000)

This cause is pending before the Court as a discretionary appeal and **claimed appeal of right**. Upon consideration of appellant's motion for stay of court of appeals' judgment,

IT IS ORDERED by the Court that the motion for stay be, and hereby is, denied.

(Hamilton County Court of Appeals; No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

(Stamped 92-464)

The Supreme Court of Ohio

Dee Ellen Garrison Bardes, Appellant, v. Samuel Pogue Todd III, Appellee.	:	**Case No. 00-2117** **ENTRY**

(FILED FEB. 14, 2001)

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as **not involving any substantial constitutional question**.

COSTS:

Docket Fee, $40.00, paid by Dee Ellen Bardes.

(Hamilton County Court of Appeals; No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

(Stamped 93-124)

The Supreme Court of Ohio

Dee Ellen Garrison Bardes, Appellant, v. Samuel Pogue Todd III, Appellee.	: : : : : :	**Case No. 00-2117** **RECONSIDERATION ENTRY** (Hamilton County)

(FILED APR. 04, 2001)

IT IS ORDERED by the Court that the motion for reconsideration in this case be, and hereby is, denied.

(Court of Appeals No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

SCO #00-2254:
Separate Appeal Of Failure
To Certify Conflicts

The Supreme Court of Ohio

Dee Ellen Garrison Bardes, Appellant, v. Samuel Pogue Todd III, Appellee.	:	Case No. 00-2254 **ENTRY**

(FILED JAN. 17, 2001)

This cause is pending before the Court as a discretionary appeal. Upon consideration of appellant's motion for stay of court of appeals' judgment entry,

IT IS ORDERED by the Court that the motion for stay be, and hereby is, denied.

(Hamilton County Court of Appeals; No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

SCO #00-2254:
Separate Appeal Of Failure
To Certify Conflicts

The Supreme Court of Ohio

Dee Ellen Garrison Bardes,	:	Case No. 00-2254
Appellant,	:	**ENTRY**
v.	:	
Samuel Pogue Todd III,	:	
Appellee.	:	

(FILED FEB. 22, 2001)

This cause is pending before the Court as a discretionary appeal. It appears from the records of this Court that appellant has not filed a memorandum in support of jurisdiction, due December 18, 2000, in compliance with the Rules of Practice of the Supreme Court and therefore has failed to prosecute this case with the requisite diligence. Upon consideration thereof,

IT IS ORDERED by the Court that this cause be be [sic], and hereby is dismissed, sua sponte.

COSTS:

Docket Fee, $40.00, paid by Dee Ellen Garrison Bardes.

(Hamilton County Court of Appeals; No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

SCO #00-2254:
Separate Appeal Of Failure
To Certify Conflicts

The Supreme Court of Ohio

Dee Ellen Garrison Bardes, Appellant, v. Samuel Pogue Todd III, Appellee.	:	Case No. 00-2254 **RECONSIDERATION ENTRY** (Hamilton County)

(FILED MAR. 19, 2001)

IT IS ORDERED by the Court that this motion for reconsideration in this case be, and hereby is, denied.

(Court of Appeals No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

SCO #00-545:
Separate Appeal Of Failure
To Hear Case Sitting "En Banc"

The Supreme Court of Ohio

Dee Ellen Garrison Bardes,	:	Case No. 00-545
Appellant,	:	**ENTRY**
v.	:	
Samuel Pogue Todd III,	:	
Appellee.	:	

(FILED JUN. 14, 2000)

Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:

Docket Fee, $40.00, paid by Dee Ellen Garrison Bardes.

(Hamilton County Court of Appeals; No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

APPENDIX D

28 U.S.C. § 1738B. Full faith and credit for child support orders

(a) General Rule. – The appropriate authorities of each State –

(1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and

(2) shall not seek or make a modification of such an order except in accordance with subsections (e), (f), and (i).

(b) Definitions. – In this section:

"child" means –

(A) a person under 18 years of age; and

(B) a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.

"child's State" means the State in which a child resides.

"child's home State" means the State in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the State in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the 6-month period.

"child support" means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

"child support order" –

(A) means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

(B) includes –

(i) a permanent or temporary order; and

(ii) an initial order or a modification of an order.

"contestant" means –

(A) a person (including a parent) who –

(i) claims a right to receive child support;

(ii) is a party to a proceeding that may result in the issuance of a child support order; or

(iii) is under a child support order; and

(B) a State or political subdivision of a State to which the right to obtain child support has been assigned.

"court" means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.

"modification" means a change in a child support order that affects the amount, scope, or duration of the

order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).

(c) Requirements of Child Support Orders. – A child support order made by a court of a State is made consistently with this section if –

(1) a court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g) –

(A) has subject matter jurisdiction to hear the matter and enter such an order; and

(B) has personal jurisdiction over the contestants; and

(2) reasonable notice and opportunity to be heard is given to the contestants.

(d) Continuing Jurisdiction. – A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any individual contestant unless the court of another State, acting in accordance with subsections (e) and (f), has made a modification of the order.

(e) Authority To Modify Orders. – A court of a State may modify a child support order issued by a court of another State if –

(1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and

(2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or

(B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order.

(f) Recognition of Child Support Orders. – If 1 or more child support orders have been issued with regard to an obligor and a child, a court shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction and enforcement:

(1) If only 1 court has issued a child support order, the order of that court must be recognized.

(2) If 2 or more courts have issued child support orders for the same obligor and child, and only 1 of the courts would have continuing, exclusive jurisdiction under this section, the order of that court must be recognized.

(3) If 2 or more courts have issued child support orders for the same obligor and child, and more than 1 of the courts would have continuing, exclusive jurisdiction under this section, an order issued by a court in the current home State of the child must be recognized, but if an order has not been issued in the current home State of

the child, the order most recently issued must be recognized.

(4) If 2 or more courts have issued child support orders for the same obligor and child, and none of the courts would have continuing, exclusive jurisdiction under this section, a court having jurisdiction over the parties shall issue a child support order, which must be recognized.

(5) The court that has issued an order recognized under this subsection is the court having continuing, exclusive jurisdiction under subsection (d).

(g) Enforcement of Modified Orders. – A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsections (e) and (f).

(h) Choice of Law. –

(1) In general. – In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).

(2) Law of state of issuance of order. – In interpreting a child support order including the duration of current payments and other obligations of support, a court shall apply the law of the State of the court that issued the order.

(3) Period of limitation. – In an action to enforce arrears under a child support order, a court shall apply the statute of limitation of the forum State or the State of

the court that issued the order, whichever statute provides the longer period of limitation.

(i) Registration for Modification. – If there is no individual contestant or child residing in the issuing State, the party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another State shall register that order in a State with jurisdiction over the nonmovant for the purpose of modification.

CREDIT(S)
2000 Electronic Update

(Added Pub.L. 103-383, § 3(a), Oct. 22, 1994, 108 Stat. 4064, and amended Pub.L. 104-193, Title III, § 322, Aug. 22, 1996, 110 Stat. 2221; Pub.L. 105-33, Title V, § 5554, Aug. 5, 1997, 111 Stat. 636.)

<General Materials (GM) – References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. Senate Report No. 103-361, see 1994 U.S. Code Cong. and Adm. News, p. 3259.

1996 Acts. House Report No. 104-651 and House Conference Report No. 104-725, see 1996 U.S. Code Cong. and Adm. News, p. 2183.

1997 Acts. House Report No. 105-149, House Conference Report No. 105-217, and Statement by President, see 1997 U.S. Code Cong. and Adm. News, p. 176.

Amendments

1997 Amendments. Subsec. (f)(4). Pub.L. 105-33, § 5554(1) substituted "a court having jurisdiction over the parties shall issue a child support order, which must be recognized." for "a court may issue a child support order, which must be recognized."

Subsec. (f)(5). Pub.L. 105-33, § 5554(2) inserted "under subsection (d)" after "jurisdiction".

1996 Amendments. Subsec. (a)(2). Pub.L. 104-193, § 322(1), substituted "subsections (e), (f) and (i)" for "subsection (e)".

Subsec. (b). Pub.L. 104-193, § 322(2), added provisions defining "child's home State".

Subsec. (c). Pub.L. 104-193, § 322(3), added "by a court of a State" preceding "is made".

Subsec. (c)(1). Pub.L. 104-193, § 322(4), added "and subsections (e), (f) and (g)" following "located".

Subsec. (d). Pub.L. 104-193, § 322(5), added "individual" preceding "contestant" and substituted "subsections (e) and (f)" for "subsection (e)".

Subsec. (e). Pub.L. 104-193, § 322(6), substituted "modify a child support order issued" for "make a modification of a child support order with respect to a child that is made".

Subsec. (e)(1). Pub.L. 104-193, § 322(7), added "pursuant to subsection (i)" following "order".

Subsec. (e)(2). Pub.L. 104-193, § 322(8), added "individual" preceding "contestant", wherever appearing, and

substituted "with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume" for "to that court's making the modification and assuming".

Subsec. (f). Pub.L. 104-193, § 322(9), (10), added subsec. (f). Former subsec. (f) was redesignated (g).

Subsec. (g). Pub.L. 104-193, § 322(9), redesignated former subsec. (f) as (g). Former subsec. (g) was redesignated subsec. (h).

Pub.L. 104-193, § 322(11), in subsec. heading, substituted "modified" for "prior" and substituted "subsections (e) and (f)" for "subsection (e)".

Subsec. (h). Pub.L. 104-193, § 322(9), redesignated former subsec. (g) as (h).

Subsec. (h)(2). Pub.L. 104-193, § 322(12)(A), added "including the duration of current payments and other obligations of support" following "support order,".

Subsec. (h)(3). Pub.L. 104-193, § 322(12)(B), added "arrears under" following "enforce".

Subsec. (i). Pub.L. 104-193, § 322(13), added subsec. (i).

Effective and Applicability Provisions

1997 Acts. Amendments by Pub.L. 105-33 made by sections 5531 to 5556 to take effect as if included in the enactment of Title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104-193, Aug. 22, 1996, 110 Stat. 2105), except for amendments made by section 5532(b)(2) (amending section

608(a)(3)(A) of Title 42, The Public Health and Welfare), see section 5557 of Pub.L. 105-33, set out as a note under section 608 of Title 42, The Public Health and Welfare.

1996 Acts. For effective date of Title III of Pub.L. 104-193, see section 395(a) to (c) of Pub.L. 104-193, set out as a note under section 654 of Title 42, The Public Health and Welfare.

Congressional Findings and Declaration of Purpose

Section 2 of Pub.L. 103-383 provided that:

* * *

[See PL 103-383 at App. 275-278 for congressional intent]

UNITED STATES PUBLIC LAWS
103rd Congress - Second Session
Convening January 25, 1994

COPR. © WEST 1994 No Claim to Orig. U.S. Govt. Works

Additions and Deletions are not identified in this document.

For Legislative History of Act, see LH database or Report for this Public Law in U.S.C.C. & A.N. Legislative History section.

PL 103-383 (S 922)
October 20, 1994

FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS ACT

An Act To provide that a State court may not modify an order of another State court requiring the payment of child support unless the recipient of child support payments resides in the State in which the modification is sought or consents to the seeking of the modification in that court.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

28 USCA § 1 NOTE

SECTION 1. SHORT TITLE.

This Act may be cited as the "Full Faith and Credit for Child Support Orders Act".

28 USCA § 1738B NOTE

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS. – The Congress finds that –

(1) there is a large and growing number of child support cases annually involving disputes between parents who reside in different States;

(2) the laws by which the courts of different jurisdictions determine their **authority to establish child support orders are not uniform;**

(3) those laws, along with **the limits imposed by the Federal system on the authority of each State to take certain actions outside its own boundaries –**

(A) encourage noncustodial parents to relocate outside the States where their children and the custodial parents reside **to avoid the jurisdiction of the courts of such States, resulting in an increase in the amount of interstate travel** and communication required to establish and collect on child support orders and a burden on custodial parents that is expensive, time consuming, and disruptive of occupations and commercial activity;

(B) contribute to the pressing problem of relatively low levels of child support payments in interstate cases and to **inequities in child support payments levels that are based solely on the noncustodial parent's choice of residence;**

(C) encourage a disregard of court orders resulting in massive arrearages nationwide;

(D) allow noncustodial parents to avoid the payment of regularly scheduled child support payments

for extensive periods of time, resulting in substantial hardship for the children for whom support is due and for their custodians; and

(E) lead to the **excessive relitigation of cases and to the establishment of conflicting orders by the courts of various jurisdictions, resulting in confusion, waste of judicial resources, disrespect for the courts, and a diminution of public confidence in the rule of law**; and

(4) among the results of the conditions described in this subsection are –

(A) the failure of the courts of the States to give full faith and credit to the judicial proceedings of the other States;

(B) the deprivation of rights of liberty and property without due process of law;

(C) burdens on commerce among the States; and

(D) harm to the welfare of children and their parents and other custodians.

(b) STATEMENT OF POLICY. – In view of the findings made in subsection (a), it is necessary to establish national standards under which the courts of the various States shall determine their jurisdiction to issue a child support order and the effect to be given by each State to child support orders issued by the courts of other States.

(c) PURPOSES. – The purposes of this Act are –

(1) to facilitate the enforcement of child support orders among the States;

(2) to discourage continuing interstate controversies over child support in the interest of greater financial stability and secure family relationships for the child; and

(3) to avoid jurisdictional competition and conflict among State courts in the establishment of child support orders.

SEC. 3. FULL FAITH AND CREDIT FOR CHILD SUPPORT ORDERS.

28 USCA § 1738B

(a) IN GENERAL. – Chapter 115 of title 28, United States Code, is amended by inserting after section 1738A the following new section:

"§ 1738B. Full faith and credit for child support orders

"(a) GENERAL RULE. – The appropriate authorities of each State –

"(1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and

"(2) shall not seek or make a modification of such an order except in accordance with subsection (e).

"(b) DEFINITIONS. – In this section:

" 'child' means –

"(A) a person under 18 years of age; and

"(B) a person 18 or more years of age with respect to whom a child support order has been issued pursuant to the laws of a State.

" 'child's State' means the State in which a child resides.

" 'child support' means a payment of money, continuing support, or arrearages or the provision of a benefit (including payment of health insurance, child care, and educational expenses) for the support of a child.

" 'child support order' –

"(A) means a judgment, decree, or order of a court requiring the payment of child support in periodic amounts or in a lump sum; and

"(B) includes –

"(i) a permanent or temporary order; and

"(ii) an initial order or a modification of an order.

" 'contestant' means –

"(A) a person (including a parent) who –

"(i) claims a right to receive child support;

"(ii) is a party to a proceeding that may result in the issuance of a child support order; or

"(iii) is under a child support order; and

"(B) a State or political subdivision of a State to which the right to obtain child support has been assigned.

" 'court' means a court or administrative agency of a State that is authorized by State law to establish the amount of child support payable by a contestant or make a modification of a child support order.

" 'modification' means a change in a child support order that affects the amount, scope, or duration of the order and modifies, replaces, supersedes, or otherwise is made subsequent to the child support order.

" 'State' means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and Indian country (as defined in section 1151 of title 18).

"(c) REQUIREMENTS OF CHILD SUPPORT ORDERS. – A child support order made is made consistently with this section if –

"(1) a court that makes the order, pursuant to the laws of the State in which the court is located –

"(A) has subject matter jurisdiction to hear the matter and enter such an order; and

"(B) has personal jurisdiction over the contestants; and

"(2) reasonable notice and opportunity to be heard is given to the contestants.

"(d) CONTINUING JURISDICTION. – A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State or the residence of any contestant unless the court of another State, acting in

accordance with subsection (e), has made a modification of the order.

"(e) AUTHORITY TO MODIFY ORDERS. – A court of a State may make a modification of a child support order with respect to a child that is made by a court of another State if –

"(1) the court has jurisdiction to make such a child support order; and

"(2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any contestant; or

"(B) each contestant has filed written consent to that court's making the modification and assuming continuing, exclusive jurisdiction over the order.

"(f) ENFORCEMENT OF PRIOR ORDERS. – A court of a State that no longer has continuing, exclusive jurisdiction of a child support order may enforce the order with respect to nonmodifiable obligations and unsatisfied obligations that accrued before the date on which a modification of the order is made under subsection (e).

"(g) CHOICE OF LAW. –

"(1) IN GENERAL. – In a proceeding to establish, modify, or enforce a child support order, the forum State's law shall apply except as provided in paragraphs (2) and (3).

"(2) LAW OF STATE OF ISSUANCE OF ORDER. – In interpreting a child support order, a court shall apply the law of the State of the court that issued the order.

"(3) PERIOD OF LIMITATION. – In an action to enforce a child support order, a court shall apply the statute of limitation of the forum State or the State of the court that issued the order, whichever statute provides the longer period of limitation.".

28 USCA Ch. 115

(b) TECHNICAL AMENDMENT. – The chapter analysis for chapter 115 of title 28, United States Code, is amended by inserting after the item relating to section 1738A the following new item:

"1738B. Full faith and credit for child support orders.".

Approved October 20, 1994.

PL 103-383, 1994 S 922

5 U.S.C. § 552a. Records maintained on individuals

(a) **Definitions.** – For purposes of this section –

(1) the term "agency" means agency as defined in section 552(e) of this title;

(2) the term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(3) the term "maintain" includes maintain, collect, use, or disseminate;

(4) the term "record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(5) the term "system of records" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual;

(6) the term "statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

(7) the term "routine use" means, with respect to the disclosure of a record, the use of such record for a

purpose which is compatible with the purpose for which it was collected;

(8) the term "matching program" –

(A) means any computerized comparison of –

(i) two or more automated systems of records or a system of records with non-Federal records for the purpose of –

(I) establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(II) recouping payments or delinquent debts under such Federal benefit programs, or

(ii) two or more automated Federal personnel or payroll systems of records or a system of Federal personnel or payroll records with non-Federal records,

(B) but does not include –

(i) matches performed to produce aggregate statistical data without any personal identifiers;

(ii) matches performed to support any research or statistical project, the specific data of which may not be used to make decisions concerning the rights, benefits, or privileges of specific individuals;

(iii) matches performed, by an agency (or component thereof) which performs as its principal function any activity pertaining to the enforcement of criminal laws, subsequent to the initiation of a specific criminal or civil law enforcement investigation of a named person or persons for the purpose of gathering evidence against such person or persons;

(iv) matches of tax information (I) pursuant to section 6103(d) of the Internal Revenue Code of 1986, (II) for purposes of tax administration as defined in section 6103(b)(4) of such Code, (III) for the purpose of intercepting a tax refund due an individual under authority granted by section 404(e), 464, or 1137 of the Social Security Act; or (IV) for the purpose of intercepting a tax refund due an individual under any other tax refund intercept program authorized by statute which has been determined by the Director of the Office of Management and Budget to contain verification, notice, and hearing requirements that are substantially similar to the procedures in section 1137 of the Social Security Act;

(v) matches –

(I) using records predominantly relating to Federal personnel, that are performed for routine administrative purposes (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)); or

(II) conducted by an agency using only records from systems of records maintained by that agency;

if the purpose of the match is not to take any adverse financial, personnel, disciplinary, or other adverse action against Federal personnel[1]

(vi) matches performed for foreign counter-intelligence purposes or to produce background checks for security clearances of Federal personnel or Federal contractor personnel;

(vii) matches performed incident to a levy described in section 6103(k)(8) of the Internal Revenue Code of 1986; or

(viii) matches performed pursuant to section 202(x)(3) or 1611(e)(1) of the Social Security Act (42 U.S.C. 402(x)(3), 1382(e)(1));

(9) the term "recipient agency" means any agency, or contractor thereof, receiving records contained in a system of records from a source agency for use in a matching program;

(10) the term "non-Federal agency" means any State or local government, or agency thereof, which receives records contained in a system of records from a source agency for use in a matching program;

(11) the term "source agency" means any agency which discloses records contained in a system of records to be used in a matching program, or any State or local government, or agency thereof, which discloses records to be used in a matching program;

---

[1] So in original. Probably should be "personnel;".

(12) the term "Federal benefit program" means any program administered or funded by the Federal Government, or by any agent or State on behalf of the Federal Government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals; and

(13) the term "Federal personnel" means officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals[2] entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

(b) Conditions of disclosure. – No agency shall disclose any record which is contained in a system of records by any means of communication to any person, or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be –

(1) to those officers and employees of the agency which maintains the record who have a need for the record in the performance of their duties;

(2) required under section 552 of this title;

(3) for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section;

---

[2] So in original. Probably should be "and individuals".

(4) to the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13;

(5) to a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) to the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or the designee of the Archivist to determine whether the record has such value;

(7) to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) to a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(9) to either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) to the Comptroller General, or any of his authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) pursuant to the order of a court of competent jurisdiction; or

(12) to a consumer reporting agency in accordance with section 3711(e) of title 31.

(c) **Accounting of certain disclosures.** – Each agency, with respect to each system of records under its control, shall –

(1) except for disclosures made under subsections (b)(1) or (b)(2) of this section, keep an accurate accounting of –

(A) the date, nature, and purpose of each disclosure of a record to any person or to another agency made under subsection (b) of this section; and

(B) the name and address of the person or agency to whom the disclosure is made;

(2) retain the accounting made under paragraph (1) of this subsection for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made;

(3) except for disclosures made under subsection (b)(7) of this section, make the accounting made under paragraph (1) of this subsection available to the individual named in the record at his request; and

(4) inform any person or other agency about any correction or notation of dispute made by the agency in

accordance with subsection (d) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

(d) **Access to records.** – Each agency that maintains a system of records shall –

(1) upon request by any individual to gain access to his record or to any information pertaining to him which is contained in the system, permit him and upon his request, a person of his own choosing to accompany him, to review the record and have a copy made of all or any portion thereof in a form comprehensible to him, except that the agency may require the individual to furnish a written statement authorizing discussion of that individual's record in the accompanying person's presence;

(2) permit the individual to request amendment of a record pertaining to him and –

(A) not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of such request, acknowledge in writing such receipt; and

(B) promptly, either –

(i) make any correction of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(ii) inform the individual of its refusal to amend the record in accordance with his request, the reason for the refusal, the procedures established by the agency for the individual to request a review of that refusal by the head of the agency or an officer designated

by the head of the agency, and the name and business address of that official;

(3) permit the individual who disagrees with the refusal of the agency to amend his record to request a review of such refusal, and not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the head of the agency extends such 30-day period; and if, after his review, the reviewing official also refuses to amend the record in accordance with the request, permit the individual to file with the agency a concise statement setting forth the reasons for his disagreement with the refusal of the agency, and notify the individual of the provisions for judicial review of the reviewing official's determination under subsection (g)(1)(A) of this section;

(4) in any disclosure, containing information about which the individual has filed a statement of disagreement, occurring after the filing of the statement under paragraph (3) of this subsection, clearly note any portion of the record which is disputed and provide copies of the statement and, if the agency deems it appropriate, copies of a concise statement of the reasons of the agency for not making the amendments requested, to persons or other agencies to whom the disputed record has been disclosed; and

(5) nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) **Agency requirements.** – Each agency that maintains a system of records shall –

(1) **maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished** by statute or by executive order of the President;

(2) collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(3) inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual –

(A) the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) the principal purpose or purposes for which the information is intended to be used;

(C) the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and

(D) the effects on him, if any, of not providing all or any part of the requested information;

(4) subject to the provisions of paragraph (11) of this subsection, publish in the Federal Register upon establishment or revision a notice of the existence and

character of the system of records, which notice shall include –

(A) the name and location of the system;

(B) the categories of individuals on whom records are maintained in the system;

(C) the categories of records maintained in the system;

(D) each routine use of the records contained in the system, including the categories of users and the purpose of such use;

(E) the policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(F) the title and business address of the agency official who is responsible for the system of records;

(G) the agency procedures whereby an individual can be notified at his request if the system of records contains a record pertaining to him;

(H) the agency procedures whereby an individual can be notified at his request how he can gain access to any record pertaining to him contained in the system of records, and how he can contest its content; and

(I) the categories of sources of records in the system;

(5) maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(6) prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to subsection (b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(7) maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(8) make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(9) establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(10) establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained;

(11) at least 30 days prior to publication of information under paragraph (4)(D) of this subsection, publish in the Federal Register notice of any new use or intended use of the information in the system, and provide an opportunity for interested persons to submit written data, views, or arguments to the agency; and

(12) if such agency is a recipient agency or a source agency in a matching program with a non-Federal agency, with respect to any establishment or revision of a matching program, at least 30 days prior to conducting such program, publish in the Federal Register notice of such establishment or revision.

(f) **Agency rules**. – In order to carry out the provisions of this section, each agency that maintains a system of records shall promulgate rules, in accordance with the requirements (including general notice) of section 553 of this title, which shall –

(1) establish procedures whereby an individual can be notified in response to his request if any system of records named by the individual contains a record pertaining to him;

(2) define reasonable times, places, and requirements for identifying an individual who requests his

record or information pertaining to him before the agency shall make the record or information available to the individual;

(3) establish procedures for the disclosure to an individual upon his request of his record or information pertaining to him, including special procedure, if deemed necessary, for the disclosure to an individual of medical records, including psychological records, pertaining to him;

(4) establish procedures for reviewing a request from an individual concerning the amendment of any record or information pertaining to the individual, for making a determination on the request, for an appeal within the agency of an initial adverse agency determination, and for whatever additional means may be necessary for each individual to be able to exercise fully his rights under this section; and

(5) establish fees to be charged, if any, to any individual for making copies of his record, excluding the cost of any search for and review of the record.

The Office of the Federal Register shall biennially compile and publish the rules promulgated under this subsection and agency notices published under subsection (e)(4) of this section in a form available to the public at low cost.

(g)(1) **Civil remedies.** – Whenever any agency

(A) makes a determination under subsection (d)(3) of this section not to amend an individual's record in accordance with his request, or fails to make such review in conformity with that subsection;

(B) refuses to comply with an individual request under subsection (d)(1) of this section;

(C) fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual; or

(D) fails to comply with any other provision of this section, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual, the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

(2)(A) In any suit brought under the provisions of subsection (g)(1)(A) of this section, the court may order the agency to amend the individual's record in accordance with his request or in such other way as the court may direct. In such a case the court shall determine the matter de novo.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(3)(A) In any suit brought under the provisions of subsection (g)(1)(B) of this section, the court may enjoin the agency from withholding the records and order the

production to the complainant of any agency records improperly withheld from him. In such a case the court shall determine the matter de novo, and may examine the contents of any agency records in camera to determine whether the records or any portion thereof may be withheld under any of the exemptions set forth in subsection (k) of this section, and the burden is on the agency to sustain its action.

(B) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this paragraph in which the complainant has substantially prevailed.

(4) In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of –

(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and

(B) the costs of the action together with reasonable attorney fees as determined by the court.

(5) An action to enforce any liability created under this section may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of

action arises, except that where an agency has materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under this section, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action by reason of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

(h) **Rights of legal guardians.** – For the purposes of this section, the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.

(i)(1) **Criminal penalties.** – Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section

shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(j) **General exemptions.** – The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from any part of this section except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) if the system of records is –

(1) maintained by the Central Intelligence Agency; or

(2) maintained by an agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of (A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or (C) reports identifiable to an

individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(k) **Specific exemptions.** – The head of any agency may promulgate rules, in accordance with the requirements (including general notice) of sections 553(b)(1), (2), and (3), (c), and (e) of this title, to exempt any system of records within the agency from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of this section if the system of records is –

(1) subject to the provisions of section 552(b)(1) of this title;

(2) investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of this section: Provided, however, That if any individual is denied any right, privilege, or benefit that he would otherwise be entitled by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) maintained in connection with providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18;

(4) required by statute to be maintained and used solely as statistical records;

(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

At the time rules are adopted under this subsection, the agency shall include in the statement required under section 553(c) of this title, the reasons why the system of records is to be exempted from a provision of this section.

(l)(1) **Archival records.** – Each agency record which is accepted by the Archivist of the United States for storage, processing, and servicing in accordance with section 3103 of title 44 shall, for the purposes of this section, be considered to be maintained by the agency which deposited the record and shall be subject to the provisions of this section. The Archivist of the United States shall not disclose the record except to the agency which maintains the record, or under rules established by that agency which are not inconsistent with the provisions of this section.

(2) Each agency record pertaining to an identifiable individual which was transferred to the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, prior to the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall not be subject to the provisions of this section, except that a statement generally describing such records (modeled after the requirements relating to records subject to subsections (e)(4)(A) through (G) of this section) shall be published in the Federal Register.

(3) Each agency record pertaining to an identifiable individual which is transferred to the National Archives of the United States as a record which has sufficient

historical or other value to warrant its continued preservation by the United States Government, on or after the effective date of this section, shall, for the purposes of this section, be considered to be maintained by the National Archives and shall be exempt from the requirements of this section except subsections (e)(4)(A) through (G) and (e)(9) of this section.

(m)(1) **Government contractors.** – When an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this section to be applied to such system. For purposes of subsection (i) of this section any such contractor and any employee of such contractor, if such contract is agreed to on or after the effective date of this section, shall be considered to be an employee of an agency.

(2) A consumer reporting agency to which a record is disclosed under section 3711(e) of title 31 shall not be considered a contractor for the purposes of this section.

(n) **Mailing lists.** – An individual's name and address may not be sold or rented by an agency unless such action is specifically authorized by law. This provision shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

(o) **Matching agreements.** – (1) No record which is contained in a system of records may be disclosed to a recipient agency or non-Federal agency for use in a computer matching program except pursuant to a written

agreement between the source agency and the recipient agency or non-Federal agency specifying –

(A) the purpose and legal authority for conducting the program;

(B) the justification for the program and the anticipated results, including a specific estimate of any savings;

(C) a description of the records that will be matched, including each data element that will be used, the approximate number of records that will be matched, and the projected starting and completion dates of the matching program;

(D) procedures for providing individualized notice at the time of application, and notice periodically thereafter as directed by the Data Integrity Board of such agency (subject to guidance provided by the Director of the Office of Management and Budget pursuant to subsection (v)), to –

(i) applicants for and recipients of financial assistance or payments under Federal benefit programs, and

(ii) applicants for and holders of positions as Federal personnel,

that any information provided by such applicants, recipients, holders, and individuals may be subject to verification through matching programs;

(E) procedures for verifying information produced in such matching program as required by subsection (p);

(F) procedures for the retention and timely destruction of identifiable records created by a recipient agency or non-Federal agency in such matching program;

(G) procedures for ensuring the administrative, technical, and physical security of the records matched and the results of such programs;

(H) prohibitions on duplication and redisclosure of records provided by the source agency within or outside the recipient agency or the non-Federal agency, except where required by law or essential to the conduct of the matching program;

(I) procedures governing the use by a recipient agency or non-Federal agency of records provided in a matching program by a source agency, including procedures governing return of the records to the source agency or destruction of records used in such program;

(J) information on assessments that have been made on the accuracy of the records that will be used in such matching program; and

(K) that the Comptroller General may have access to all records of a recipient agency or a non-Federal agency that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

(2)(A) A copy of each agreement entered into pursuant to paragraph (1) shall –

(i) be transmitted to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives; and

(ii) be available upon request to the public.

(B) No such agreement shall be effective until 30 days after the date on which such a copy is transmitted pursuant to subparagraph (A)(i).

(C) Such an agreement shall remain in effect only for such period, not to exceed 18 months, as the Data Integrity Board of the agency determines is appropriate in light of the purposes, and length of time necessary for the conduct, of the matching program.

(D) Within 3 months prior to the expiration of such an agreement pursuant to subparagraph (C), the Data Integrity Board of the agency may, without additional review, renew the matching agreement for a current, ongoing matching program for not more than one additional year if –

(i) such program will be conducted without any change; and

(ii) each party to the agreement certifies to the Board in writing that the program has been conducted in compliance with the agreement.

(p) **Verification and opportunity to contest findings.** – (1) In order to protect any individual whose records are used in a matching program, no recipient agency, non-Federal agency, or source agency may suspend, terminate, reduce, or make a final denial of any financial assistance or payment under a Federal benefit program to such individual, or take other adverse action against such individual, as a result of information produced by such matching program, until –

(A)(i) the agency has independently verified the information; or

(ii) the Data Integrity Board of the agency, or in the case of a non-Federal agency the Data Integrity Board of the source agency, determines in accordance with guidance issued by the Director of the Office of Management and Budget that –

(I) the information is limited to identification and amount of benefits paid by the source agency under a Federal benefit program; and

(II) there is a high degree of confidence that the information provided to the recipient agency is accurate;

(B) the individual receives a notice from the agency containing a statement of its findings and informing the individual of the opportunity to contest such findings; and

(C)(i) the expiration of any time period established for the program by statute or regulation for the individual to respond to that notice; or

(ii) in the case of a program for which no such period is established, the end of the 30-day period beginning on the date on which notice under subparagraph (B) is mailed or otherwise provided to the individual.

(2) Independent verification referred to in paragraph (1) requires investigation and confirmation of specific information relating to an individual that is used as a basis for an adverse action against the individual, including where applicable investigation and confirmation of –

(A) the amount of any asset or income involved;

(B) whether such individual actually has or had access to such asset or income for such individual's own use; and

(C) the period or periods when the individual actually had such asset or income.

(3) Notwithstanding paragraph (1), an agency may take any appropriate action otherwise prohibited by such paragraph if the agency determines that the public health or public safety may be adversely affected or significantly threatened during any notice period required by such paragraph.

(q) **Sanctions.** – (1) Notwithstanding any other provision of law, no source agency may disclose any record which is contained in a system of records to a recipient agency or non-Federal agency for a matching program if such source agency has reason to believe that the requirements of subsection (p), or any matching agreement entered into pursuant to subsection (o), or both, are not being met by such recipient agency.

(2) No source agency may renew a matching agreement unless –

(A) the recipient agency or non-Federal agency has certified that it has complied with the provisions of that agreement; and

(B) the source agency has no reason to believe that the certification is inaccurate.

(r) **Report on new systems and matching programs.** – Each agency that proposes to establish or make a significant change in a system of records or a matching program shall provide adequate advance notice of any such proposal (in duplicate) to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals.

(s) **Biennial report.** – The President shall biennially submit to the Speaker of the House of Representatives and the President pro tempore of the Senate a report –

(1) describing the actions of the Director of the Office of Management and Budget pursuant to section 6 of the Privacy Act of 1974 during the preceding 2 years;

(2) describing the exercise of individual rights of access and amendment under this section during such years;

(3) identifying changes in or additions to systems of records;

(4) containing such other information concerning administration of this section as may be necessary or useful to the Congress in reviewing the effectiveness of this section in carrying out the purposes of the Privacy Act of 1974.

(t)(1) **Effect of other laws.** – No agency shall rely on any exemption contained in section 552 of this title to withhold from an individual any record which is otherwise

accessible to such individual under the provisions of this section.

(2) No agency shall rely on any exemption in this section to withhold from an individual any record which is otherwise accessible to such individual under the provisions of section 552 of this title.

(u) **Data Integrity Boards.** – (1) Every agency conducting or participating in a matching program shall establish a Data Integrity Board to oversee and coordinate among the various components of such agency the agency's implementation of this section.

(2) Each Data Integrity Board shall consist of senior officials designated by the head of the agency, and shall include any senior official designated by the head of the agency as responsible for implementation of this section, and the inspector general of the agency, if any. The inspector general shall not serve as chairman of the Data Integrity Board.

(3) Each Data Integrity Board –

(A) shall review, approve, and maintain all written agreements for receipt or disclosure of agency records for matching programs to ensure compliance with subsection (o), and all relevant statutes, regulations, and guidelines;

(B) shall review all matching programs in which the agency has participated during the year, either as a source agency or recipient agency, determine compliance with applicable laws, regulations, guidelines, and agency agreements, and assess the costs and benefits of such programs;

(C) shall review all recurring matching programs in which the agency has participated during the year, either as a source agency or recipient agency, for continued justification for such disclosures;

(D) shall compile an annual report, which shall be submitted to the head of the agency and the Office of Management and Budget and made available to the public on request, describing the matching activities of the agency, including –

(i) matching programs in which the agency has participated as a source agency or recipient agency;

(ii) matching agreements proposed under subsection (o) that were disapproved by the Board;

(iii) any changes in membership or structure of the Board in the preceding year;

(iv) the reasons for any waiver of the requirement in paragraph (4) of this section for completion and submission of a cost-benefit analysis prior to the approval of a matching program;

(v) any violations of matching agreements that have been alleged or identified and any corrective action taken; and

(vi) any other information required by the Director of the Office of Management and Budget to be included in such report;

(E) shall serve as a clearinghouse for receiving and providing information on the accuracy, completeness, and reliability of records used in matching programs;

(F) shall provide interpretation and guidance to agency components and personnel on the requirements of this section for matching programs;

(G) shall review agency recordkeeping and disposal policies and practices for matching programs to assure compliance with this section; and

(H) may review and report on any agency matching activities that are not matching programs.

(4)(A) Except as provided in subparagraphs (B) and (C), a Data Integrity Board shall not approve any written agreement for a matching program unless the agency has completed and submitted to such Board a cost-benefit analysis of the proposed program and such analysis demonstrates that the program is likely to be cost effective.[3]

(B) The Board may waive the requirements of subparagraph (A) of this paragraph if it determines in writing, in accordance with guidelines prescribed by the Director of the Office of Management and Budget, that a cost-benefit analysis is not required.

(C) A cost-benefit analysis shall not be required under subparagraph (A) prior to the initial approval of a written agreement for a matching program that is specifically required by statute. Any subsequent written agreement for such a program shall not be approved by the Data Integrity Board unless the agency has submitted a cost-benefit analysis of the program as conducted under the preceding approval of such agreement.

---

[3] So in original. Probably should be "cost-effective".

(5)(A) If a matching agreement is disapproved by a Data Integrity Board, any party to such agreement may appeal the disapproval to the Director of the Office of Management and Budget. Timely notice of the filing of such an appeal shall be provided by the Director of the Office of Management and Budget to the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives.

(B) The Director of the Office of Management and Budget may approve a matching agreement notwithstanding the disapproval of a Data Integrity Board if the Director determines that –

(i) the matching program will be consistent with all applicable legal, regulatory, and policy requirements;

(ii) there is adequate evidence that the matching agreement will be cost-effective; and

(iii) the matching program is in the public interest.

(C) The decision of the Director to approve a matching agreement shall not take effect until 30 days after it is reported to committees described in subparagraph (A).

(D) If the Data Integrity Board and the Director of the Office of Management and Budget disapprove a matching program proposed by the inspector general of an agency, the inspector general may report the disapproval to the head of the agency and to the Congress.

(6) In the reports required by paragraph (3)(D), agency matching activities that are not matching programs may be reported on an aggregate basis, if and to the extent necessary to protect ongoing law enforcement or counterintelligence investigations.

[(7) Redesignated (6)]

(v) **Office of Management and Budget responsibilities.** – The Director of the Office of Management and Budget shall –

(1) develop and, after notice and opportunity for public comment, prescribe guidelines and regulations for the use of agencies in implementing the provisions of this section; and

(2) provide continuing assistance to and oversight of the implementation of this section by agencies.

CREDIT(S)

1996 Main Volume

(Added Pub.L. 93-579, § 3, Dec. 31, 1974, 88 Stat. 1897, and amended Pub.L. 94-183, § 2(2), Dec. 31, 1975, 89 Stat. 1057; Pub.L. 97-365, § 2, Oct. 25, 1982, 96 Stat. 1749; Pub.L. 97-375, Title II, § 201(a), (b), Dec. 21, 1982, 96 Stat. 1821; Pub.L. 97-452, § 2(a)(1), Jan. 12, 1983, 96 Stat. 2478; Pub.L. 98-477, § 2(c), Oct. 15, 1984, 98 Stat. 2211; Pub.L. 98-497, Title I, § 107(g), Oct. 19, 1984, 98 Stat. 2292; Pub.L. 100-503, §§ 2 to 6(a), 7, 8, Oct. 18, 1988, 102 Stat. 2507 to 2514; Pub.L. 101-508, Title VII, § 7201(b)(1), Nov. 5, 1990, 104 Stat. 1388-334; Pub.L. 103-66, Title XIII, § 13581(c), Aug. 10, 1993, 107 Stat. 611.)

2000 Electronic Update

(As amended Pub.L. 104-193, Title I, § 110(w), Aug. 22, 1996, 110 Stat. 2175; Pub.L. 104-226, § 1(b)(3), Oct. 2, 1996, 110 Stat. 3033; Pub.L. 104-316, Title I, § 115(g)(2)(B), Oct. 19, 1996, 110 Stat. 3835; Pub.L. 105-34, Title X, § 1026(b)(2), Aug. 5, 1997, 111 Stat. 925; Pub.L. 105-362, Title XIII, § 1301(d), Nov. 10, 1998, 112 Stat. 3293; Pub.L. 106-170, Title IV, § 402(a)(2), Dec. 17, 1999, 113 Stat. 1908.)

* * *

PENDING LEGISLATION

* * *

13 2001 CONG US HR 2205USCAS552A, 107th CONGRESS, 1st Session, To amend title II of the Social Security Act and the Internal Revenue Code of 1986 to protect the integrity and confidentiality of Social Security account numbers issued under such title, to prohibit the establ (Jan 03, 2001), Introduced in House, Technical or conforming amendment.

Copr. © West Group 2000.
No claim to orig. U.S. Govt. Works

§ 552a. Records maintained on individuals

CREDIT(S)

1996 Main Volume

(Added Pub.L. 93-579, § 3, Dec. 31, 1974, 88 Stat. 1897, and amended Pub.L. 94- 183, § 2(2), Dec. 31, 1975, 89 Stat. 1057; Pub.L. 97-365, § 2, Oct. 25, 1982, 96 Stat. 1749; Pub.L. 97-375, Title II, § 201(a), (b), Dec. 21, 1982, 96 Stat. 1821; Pub.L. 97-452, § 2(a)(1), Jan. 12, 1983, 96 Stat. 2478; Pub.L. 98-477, § 2(c), Oct. 15, 1984, 98 Stat. 2211; Pub.L.

98-497, Title I, § 107(g), Oct. 19, 1984, 98 Stat. 2292; Pub.L. 100-503, §§ 2 to 6(a), 7, 8, Oct. 18, 1988, 102 Stat. 2507 to 2514; Pub. L. 101-508, Title VII, § 7201(b)(1), Nov. 5, 1990, 104 Stat. 1388-334; Pub.L. 103-66, Title XIII, § 13581(c), Aug. 10, 1993, 107 Stat. 611.)

2000 Electronic Update

(As amended Pub.L. 104-193, Title I, § 110(w), Aug. 22, 1996, 110 Stat. 2175; Pub.L. 104-226, § 1(b)(3), Oct. 2, 1996, 110 Stat. 3033; Pub.L. 104-316, Title I, § 115(g)(2)(B), Oct. 19, 1996, 110 Stat. 3835; Pub.L. 105-34, Title X, § 1026(b)(2), Aug. 5, 1997, 111 Stat. 925; Pub.L. 105-362, Title XIII, § 1301(d), Nov. 10, 1998, 112 Stat. 3292; Pub.L. 106-170, Title IV, § 402(a)(2), Dec. 17, 1999, 113 Stat. 1908.)

* * *

CONGRESSIONAL FINDINGS AND STATEMENT OF PURPOSE

SECTION 2 OF PUB.L. 93-579 PROVIDED THAT:

"(a) THE CONGRESS FINDS THAT –

"(1) the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies;

"(2) the increasing use of computers and sophisticated information technology, while essential to the efficient operations of the Government, has greatly magnified the harm to individual privacy that can occur from any collection, maintenance, use, or dissemination of personal information;

"(3) the opportunities for an individual to secure employment, insurance, and credit, and his right to due process, and other legal protections are endangered by the misuse of certain information systems;

"(4) the right to privacy is a personal and fundamental right protected by the Constitution of the United States; and

"(5) in order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary and proper for the Congress to regulate the collection, maintenance, use, and dissemination of information by such agencies.

"(b) The purpose of this act [enacting this section and provisions set out as notes under this section] is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies, except as otherwise provided by law, to –

"(1) permit an individual to determine what records pertaining to him are collected, maintained, used, or disseminated by such agencies;

"(2) permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent;

"(3) permit an individual to gain access to information pertaining to him in Federal agency records, to have a copy made of all or any portion thereof, and to correct or amend such records;

"(4) collect, maintain, use, or disseminate any record of identifiable personal information in a manner

that assures that such action is for a necessary and lawful purpose, that the information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information;

"(5) permit exemptions from the requirements with respect to records provided in this Act only in those cases where there is an important public policy need for such exemption as has been determined by specific statutory authority; and

"(6) be subject to civil suit for any damages which occur as a result of willful or intentional action which violates any individual's rights under this Act."

Construction of 1988 Amendments

Section 9 of Pub.L. 100-503 provided that: "Nothing in the amendments made by this Act [amending this section and repealing provisions set out as a note under this section] shall be construed to authorize –

"(1) the establishment or maintenance by any agency of a national data bank that combines, merges, or links information on individuals maintained in systems of records by Federal agencies;

"(2) the direct linking of computerized systems of records maintained by Federal agencies;

"(3) the computer matching of records not otherwise authorized by law; or

"(4) the disclosure of records for computer matching except to a Federal, State, or Local agency."

DISCLOSURE OF SOCIAL SECURITY NUMBER

SECTION 7 OF PUB.L. 93-579 PROVIDED THAT:

"(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

"(2) the [The] provisions of paragraph (1) of this subsection shall not apply with respect to –

"(A) any disclosure which is required by Federal statute, or

"(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

"(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it."

GUIDELINES AND REGULATIONS FOR MAINTENANCE OF PRIVACY AND PROTECTION OF RECORDS OF INDIVIDUALS

Section 6 of Pub.L. 93-579, which provided that the Office of Management and Budget shall develop guidelines and regulations for use of agencies in implementing

provisions of this section and provide continuing assistance to and oversight of the implementation of the provisions of such section by agencies, was repealed by Pub.L. 100-503, § 6(c), Oct. 18, 1988, 102 Stat. 2513.

Implementation Guidance for 1988 Amendments

Section 6(b) of Pub.L. 100-503 provided that: "The Director shall, pursuant to section 552a(v) of title 5, United States Code, develop guidelines and regulations for the use of agencies in implementing the amendments made by this Act [amending this section and repealing provisions set out as a note under this section] not later than 8 months after the date of enactment of this Act [Oct. 18, 1988]."

Limitation on Application of Verification Requirement

Section 7201(c) of Pub.L. 101-508 provided that: "Section 552a(p)(1)(A)(ii)(II) of title 5, United States Code [subsec. (p)(1)(A)(ii)(II) of this section], as amended by section 2 [probably means section 7201(b)(1) of Pub.L. 101-508], shall not apply to a program referred to in paragraph (1), (2), or (4) of section 1137(b) of the Social Security Act (42 U.S.C. 1320b- 7), until the earlier of –

"(1) the date on which the Data Integrity Board of the Federal agency which administers that program determines that there is not a high degree of confidence that information provided by that agency under Federal matching programs is accurate; or

"(2) 30 days after the date of publication of guidance under section 2(b) [probably means section

7201(b)(2) of Pub.L. 101-508, set out as a note under this section]."

PRIVACY PROTECTION STUDY COMMISSION

Section 5 of Pub.L. 93-579, as amended by Pub.L. 95-38, June 1, 1977, 91 Stat. 179, which established the Privacy Protection Study Commission and provided that the Commission study data banks, automated data processing programs and information systems of governmental, regional and private organizations to determine standards and procedures in force for protection of personal information, that the Commission report to the President and Congress the extent to which requirements and principles of section 552a of title 5 should be applied to the information practices of those organizations, and that it make other legislative recommendations to protect the privacy of individuals while meeting the legitimate informational needs of government and society, ceased to exist on September 30, 1997, pursuant to section 5(g) of Pub.L. 93-579.

Publication of Guidance Under Subsection (p)(1)(A)(ii)

Section 7201(b)(2) of Pub.L. 101-508 provided that: "Not later than 90 days after the date of the enactment of this Act [Nov. 5, 1990], the Director of the Office of Management and Budget shall publish guidance under subsection (p)(1)(A)(ii) of section 552a of title 5, United States Code [subsec. (p)(1)(A)(ii) of this section], as amended by this act."

APPENDIX E

UNITED STATES CONSTITITION

ARTICLE I

SECTION 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

* * *

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

* * *

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

* * *

SECTION 10. No state shall enter into any Treaty, Alliance, or Confederation, grant Letters of Marque or Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

* * *

ARTICLE IV

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and proceedings shall be proved, and the Effect thereof.

SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

* * *

ARTICLE VI

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the

right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT XXVI

SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

[More Appendix A, Appendix B & Appendix C Orders Omitted Above]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES

Appellant,

vs.

SAMUEL POGUE TODD III

Appellee.

APPEAL NO. C-000055

ENTRY OVERRULING MOTION TO CERTIFY

This cause came on to be considered upon the motion of the appellant filed herein for an Order of this Court to certify a conflict to the Ohio Supreme Court, and

The Court, upon consideration thereof, finds that the motion is not well taken and is overruled.

To The Clerk:

Enter upon the Journal of the Court on 3/24/00 per order of the Court.

By: /s/ Hildebrandt, J.
Presiding Judge

(Copies sent to all counsel)

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DEE ELLEN G. BARDES
Appellant

APPEAL NO. C-000055

SAMUEL POGUE TODD III
Appellee

ENTRY STRIKING FILING OF MAY 29, 2001

(ENTERED JUNE 15, 2001)

This cause came on to be considered upon the PRO SE "Plaintiff/appellant/petitioner's Motion invoking limited concurrent jurisdiction & seeking relief to facilitate and enable federal jurisdiction by the United States Supreme Court" filed herein on May 29, 2001, and

The Court *sua sponte* strikes same for failure to comply with the Rules of Appellate Procedure.

To The Clerk:
Enter upon the Journal of the Court on 6/15/01 per order of the Court.

By: /s/ Gorman, J.
Presiding Judge

(Copies sent to all counsel)

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DEE ELLEN G. BARDES
Appellant

vs.

SAMUEL POGUE TODD III
Appellee

APPEAL NO. C-000055

ENTRY OVERRULING MOTION TO RECONSIDER

(ENTERED JULY 13, 2001)

This cause came on to be considered upon the PRO SE motion of the appellant filed herein for reconsideration, and

The Court, upon consideration thereof, finds that the motion is not well taken and is overruled.

To The Clerk:
Enter upon the Journal of the Court on 7/13/01 per order of the Court.

By: /s/ Gorman, J.
Presiding Judge

(Copies sent to all counsel)

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DEE ELLEN G. BARDES
Appellant

SAMUEL POGUE TODD III
Appellee

APPEAL NO. C-000055

ENTRY STRIKING FILING OF JULY 24, 2001

This cause came on to be considered upon the PRO SE filing of appellant filed herein on July 24, 2001 captioned: Appellant/Petitioner's Notice of Inter Alia: 1) United States Supreme Court Granting Final Extension of Time, 2) Extraordinary Writs require Preclusion of Adequate Relief from any Court (S.C. Rule 20.1), and 3) Concurrent Jurisdiction of First District and SCO during Pendency of Appeal, SCO-01-1231, and

The Court *sua sponte* strikes same for failure to comply with the Rules of Appellate Procedure as there is no provision within the appellate rules for the filing of same.

To The Clerk:

Enter upon the Journal of the Court on 8/10/01 per order of the Court.

By: /s/ Gorman, J.
Presiding Judge

(Copies sent to all counsel)

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES	:	Case No. DR9402798
	:	File No. E-194749
Plaintiff/Petitioner	:	Judge Cunningham
-vs-	:	**ORDER**
SAMUEL P. TODD, III	:	**DISMISSING**
Defendant/Respondent	:	**MOTION TO STRIKE**

(ENTERED JUL. 24, 2001)

The above captioned matter came before the Court on Plaintiff/Petitioner's motion to strike filed on June 22, 2001. Plaintiff/Petitioner seeks to have the court strike Defendant/Respondent's June 14, 2001 motion for a more definitive statement. However, on June 26, 2001 Defendant/Respondent filed a notice withdrawing his motion. As the question before the court is now moot, the court hereby dismisses Plaintiff/Petitioner's motion to strike.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES Plaintiff/Appellant/ Petitioner -vs- SAMUEL P. TODD, III Defendant/Appellee/ Respondent	Case No. DR9402798 File No. E-E194749 Judge Cunningham **Order Dismissing Plaintiff/Appellant/ Petitioner's Motion Invoking Limited Jurisdiction & Motion for Findings of Fact on Federal Claims**

(ENTERED JUL. 24, 2001)

The above captioned matter came before the court on Plaintiff's motion invoking limited jurisdiction and motion for findings of fact on federal claims filed May 23, 2001 and June 6, 2001, respectively. Defendant responded with a motion to dismiss on June 25, 2001 followed by Plaintiff's reply on July 3, 2001.

Upon consideration of the matters pending before the court, the court hereby dismisses Plaintiff's motions for lack of jurisdiction.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'ELLEN BARDES	Case No. DR9402798
Plaintiff	File No. E-194749
-vs-	Judge Cunningham
SAMUEL P. TODD, III	**ORDER FOR SUBMISSION AND DETERMINATION WITHOUT ORAL HEARING**
Defendant	

(ENTERED JUNE 4, 2001)

Plaintiff/Appellant/Petitioner's Motion Invoking Limited Jurisdiction & Seeking Relief filed May 23, 2001 as supplemented on May 25 and May 29, 2001 shall be decided by the Court without oral hearing pursuant to Civil Rule 7(B)(2) of the Ohio Rules of Civil Procedure. Defendant/Appellee/Respondent shall have ten (10) days from journalization of this order to file his response to the motion. Plaintiff shall have ten (10) days from the filing of a response to file a reply. Thereafter, the Court will take the matter under submission and render its decision.

IT IS SO ORDERED.

/s/ Penelope R. Cunningham
Penelope R. Cunningham
Judge

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

DEE ELLEN G. BARDES
Appellant,

APPEAL NO. C-010498
TRIAL NO. DR 9402798

vs.

SAMUEL POGUE TODD III
Appellee.

ENTRY OF DISMISSAL

This cause came on to be considered upon the appeal from the trial court, and

The Court *sua sponte* dismisses the appeal for failure of the appellant to comply with the Ohio Rules of Appellate Procedure to wit: the Order from which the appeal is taken is not a final appealable order.

It is further Ordered that a certified copy of this judgment shall constitute the mandate to the trial court pursuant to Rule 27, Ohio Rules of Appellate Procedure.

To The Clerk:

Enter upon the Journal of the Court on 8/17/01 per order of the Court.

By: /s/ Gorman, J.
Presiding Judge

(Copy sent to counsel)

THE SUPREME COURT OF OHIO

Dee Ellen Garrison Bardes,
Appellant,

v.

Samuel Pogue Todd III,
Appellee.

Case No. 00-2117

ENTRY

(FILED JULY 16, 2001)

This cause came on for further consideration upon appellant's emergency motion demanding, *inter alia*, issuance of certificates of federal jurisdiction. Upon consideration thereof,

IT IS ORDERED by the Court that the emergency motion demanding, *inter alia*, issuance of certificates of federal jurisdiction be, and hereby is, denied.

(Hamilton County Court of Appeals; No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

THE SUPREME COURT OF OHIO

Dee Ellen Garrison Bardes, Appellant, v. Samuel Pogue Todd, III, Appellee.	:	Case No. 00-2117 **ENTRY**

(FILED JUL. 26, 2001)

This cause came on for further consideration upon appellant's **emergency motion for stay of this Court's July 16**, 2001, entry, or, in the alternative, motion to vacate. Upon consideration thereof,

IT IS ORDERED by the Court that the motion be, and hereby is, denied.

(Hamilton County Court of Appeals; No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

THE SUPREME COURT OF OHIO

Dee Ellen Garrison Bardes, Appellant, v. Samuel Pogue Todd, III, Appellee.	:	Case No. 00-545 **ENTRY**

(FILED APR. 19, 2000)

This cause is pending before the Court as a discretionary appeal and claimed appeal of right. Upon consideration of appellant's motion for stay of court of appeals' proceedings and appellee's motion to strike motion for stay of proceedings,

IT IS ORDERED by the Court that the motion for stay be and hereby is, denied.

IT IS FURTHER ORDERED by the Court that the motion to strike be, and hereby is, denied as moot.

(Hamilton County Court of Appeals; No. C000055)

/s/ Thomas J. Moyer
THOMAS J. MOYER
Chief Justice

PRINTED: 7/09/01
REPORT: PRDOCKT

* * * THE SUPREME COURT OF OHIO * * *
CASE INFORMATION

GENERAL INFORMATION

CASE: **01-1231** Discretionary Appeal (P & GGI); Claimed Appeal of Right
FILED: 07/06/01

Dee Ellen G. Bardes
v. Samuel Pogue Todd III

PARTIES AND ATTORNEYS

Dee Ellen G. Bardes; ANT – Appellant
NOT REPRESENTED BY COUNSEL

Samuel Pogue Todd,; AEE – Appellee
REPRESENTED BY: William Stuart Abernethy, Jr.

DOCKET ITEMS

Date	Description	Filed By
07/06/01	Notice of appeal of Dee Ellen G. Bardes	ANT
	Motion for stay of court of appeals decision	ANT
	And motion to consolidate case with 00-2117	ANT
07/09/01	Copy of notice of appeal sent to clerk of court of appeals	
	Memorandum in support of jurisdiction	ANT

* * * END OF CASE INFORMATION * * *

(certified seal)

APPENDIX F

(LOGO)

NEW JERSEY GENERAL ASSEMBLY

[Names And Address Omitted In Printing]

March 15, 1999

Ms. Dee Bardes
1035 Paxton Avenue
Cincinnati, OH 47208-2828

Dear Ms. Bardes:

Thank you for contacting my office regarding Assembly Bill 776, which pertains to the issue of a divorced parents' obligation to pay for their children's post high school education expenses under certain circumstances. I very much appreciate the time you took to obtain information on this important legislation.

The purpose of this legislation is to essentially codify the New Jersey Supreme Court case, Newburgh v. Arrigo, which held that, in general, financially capable parents should contribute to the higher education costs of children who are qualified students. Since this ruling, judges have been regularly following the determination made by the judge in that particular case. In some instances, however, judges have been known to stray from this ruling, only to cause lengthy and costly appeal processes for many of New Jersey's citizens. A-776 would add this ruling to the statute, thereby strengthening the case ruling, and forcing judges to follow the ruling. The passing of this legislation would also save many citizens from the rigors of this appeal process, and allow for fairness

between parents who wish to send their children on to a post high school education.

Thank you again for your interest in A-776. I hope that I have been of assistance to you.

Sincerely,

/s/ Loretta Weinberg
Loretta Weinberg
Assemblywoman, District 37

LW:ais
a776

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

June 12, 2001
(Filed Jun. 18, 2001)

Clerk
Court of Appeals of Ohio,
Hamilton County
Hamilton County Courthouse
1000 Main Street, Room 329
Cincinnati, OH 45202

Re: Dee Ellen Garrison Bardes
v. Samuel Pogue Todd, III
Application No. 00A1084
(Your Court No. C000055)

Dear Clerk:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on June 12, 2001, extended the time to and including August 2, 2001.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By /s/ Loretta S. Ruffin
Loretta S. Ruffin
Assistant Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

NOTIFICATION LIST

Ms. Dee Ellen Garrison Bardes
1035 Paxton Avenue
Cincinnati, OH 45208-2828

Mr. William S. Abernethy, Jr.
Strauss & Troy
150 E. 4th Street, 4th Floor
Cincinnati, OH 45202

Clerk
Court of Appeals of Ohio,
Hamilton County
Hamilton County Courthouse
1000 Main Street, Room 329
Cincinnati, OH 45202

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

July 18, 2001

Ms. Dee Ellen Garrison Bardes
1035 Paxton Avenue
Cincinnati, OH 45208-2828

RE: Dee Ellen Garrison Bardes
v. Samuel Pogue Todd, III
Application No. 00A1084

Dear Ms. Bardes:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Stevens, who on July 18, 2001, extended the time to and including September 1, 2001.

This letter has been sent to those designated on the attached notification list.

Sincerely,

WILLIAM K. SUTER, Clerk

By /s/ Loretta S. Ruffin
Loretta S. Ruffin
Assistant Clerk

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

NOTIFICATION LIST

Ms. Dee Ellen Garrison Bardes
1035 Paxton Avenue
Cincinnati, OH 45208-2828

Mr. William S. Abernethy, Jr.
Strauss & Troy
150 E. 4th Street, 4th Floor
Cincinnati, OH 45202

Clerk
Court of Appeals of Ohio,
Hamilton County
Hamilton County Courthouse
1000 Main Street, Room 329
Cincinnati, OH 45202

[SEAL] **U.S. Department of Justice**
Civil Division
Washington, D.C. 20530

July 26, 2001

Ms. Dee Ellen G. Bardes
1035 Paxton Ave.
Cincinnati, Ohio 45208-2828

Dear Ms. Bardes:

This letter responds to your request that the government intervene in Supreme Court on your behalf in *Bardes v. Todd*, 139 Ohio App.3d 938, 746 N.E.2d 229 (2000). The Department of Justice represents the interests of the federal government in the courts and only rarely participates in private lawsuits in the Supreme Court unless the Court has granted certiorari. Unfortunately, I must advise you that your divorce and child-support action is not the kind of case in which the government would make an exception to its general policy of not taking sides in a domestic relations dispute.

I am returning the extensive papers that you sent us as you may want to use them.

Very truly yours,

/s/ Anthony J. Steinmeyer
Anthony J. Steinmeyer
Assistant Branch Director

APPENDIX D – Continued

5 U.S.C.A. § 551

§ 551. Definitions

For the purpose of this subchapter –

(1) "agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include –

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States;

(D) the government of the District of Columbia;

or except as to the requirements of section 552 of this title –

(E) agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

* * *

(2) "person" includes an individual, partnership, corporation, association, or public or private organization other than an agency;

(3) "party" includes a person or agency named or admitted as a party, or properly seeking and entitled as of

right to be admitted as a party, in an agency proceeding, and a person or agency admitted by an agency as a party for limited purposes;

* * *

UNITED STATES CODE ANNOTATED
TITLE 26. INTERNAL REVENUE CODE
SUBTITLE A – INCOME TAXES
CHAPTER 1 – NORMAL TAXES AD SURTAXES
SUBCHAPTER F – EXEMPT ORGANIZATIONS
PART VIII – HIGHER EDUCATION SAVINGS ENTITIES

26 U.S.C. § 529 (I.R.C. § 529)

§ 529. Qualified State tuition programs

(a) General rule. – A qualified State tuition program shall be exempt from taxation under this subtitle. Notwithstanding the preceding sentence, such program shall be subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable organizations).

(b) Qualified State tuition program. – For purposes of this section –

(1) In general. – The term "qualified State tuition program" means a program established and maintained by a State or agency or instrumentality thereof –

(A) under which a person –

(i) may purchase tuition credits or certificates on behalf of a designated beneficiary which entitle the beneficiary to the waiver or payment of qualified higher education expenses of the beneficiary, or

(ii) may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account, and

(B) which meets the other requirements of this subsection.

(2) Cash contributions. – A program shall not be treated as a qualified State tuition program unless it provides that purchases or contributions may only be made in cash.

(3) Refunds. – A program shall not be treated as a qualified State tuition program unless it imposes a more than de minimis penalty on any refund of earnings from the account which are not –

(A) used for qualified higher education expenses of the designated beneficiary,

(B) made on account of the death or disability of the designated beneficiary, or

(C) made on account of a scholarship (or allowance or payment described in section 135(d)(1)(B) or (C)) received by the designated beneficiary to the extent the amount of the refund does not exceed the amount of the scholarship, allowance, or payment.

(4) Separate accounting. – a program shall not be treated as a qualified State tuition program unless it provides separate accounting for each designated beneficiary.

(5) No investment direction. – A program shall not be treated as a qualified State tuition program unless it provides that any contributor to, or designated beneficiary under, such program may not directly or indirectly direct the investment of any contributions to the program (or any earnings thereon).

(6) No pledging of interest as security. – A program shall not be treated as a qualified State tuition program if it allows any interest in the program or any portion thereof to be used as security for a loan.

(7) Prohibition on excess contributions. – A program shall not be treated as a qualified State tuition program unless it provides adequate safeguards to prevent contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the beneficiary.

(c) Tax treatment of designated beneficiaries and contributors. –

(1) In general. – Except as otherwise provided in this subsection, no amount shall be includible in gross income of –

(A) a designated beneficiary under a qualified State tuition program, or

(B) a contributor to such program on behalf of a designated beneficiary, with respect to any distribution or earnings under such program.

(2) Gift tax treatment of contributions. – For purposes of chapters 12 and 13 –

(A) In general. – Any contribution to a qualified tuition program on behalf of any designated beneficiary –

(i) shall be treated as a completed gift to such beneficiary which is not a future interest in property, and

(ii) shall not be treated as a qualified transfer under section 2503(e).

(B) Treatment of excess contributions. – If the aggregate amount of contributions described in subparagraph (A) during the calendar year by a donor exceeds the limitation for such year under section 2503(b), such aggregate amount shall, at the election of the donor, be taken into account for purposes of such section ratably over the 5-year period beginning with such calendar year.

(3) Distributions. –

(A) In general. – Any distribution under a qualified State tuition program shall be includible in the gross income of the distributee in the manner as provided under section 72 to the extent not excluded from gross income under any other provision of this chapter.

(B) In-kind distributions. – Any benefit furnished to a designated beneficiary under a qualified State tuition program shall be treated as a distribution to the beneficiary.

(C) Change in beneficiaries. –

(i) Rollovers. – Subparagraph (A) shall not apply to that portion of any distribution which, within 60 days of such distribution, is transferred to the credit of another designated beneficiary under a qualified State tuition program who is a member of the family of the designated beneficiary with respect to which the distribution was made.

(ii) Change in designated beneficiaries. – Any change in the designated beneficiary of an interest in a qualified State tuition program shall not be treated as a distribution for purposes of subparagraph (A) if the new

beneficiary is a member of the family of the old beneficiary.

(D) Operating rules. – For purposes of applying section 72 –

(i) to the extent provided by the Secretary, all qualified State tuition programs of which an individual is a designated beneficiary shall be treated as one program,

(ii) all distributions during a taxable year shall be treated as one distribution, and

(iii) the value of the contract, income on the contract, and investment in the contract shall be computed as of the close of the calendar year in which the taxable year begins.

(4) Estate tax treatment. –

(A) In general. – No amount shall be includible in the gross estate of any individual for purposes of chapter 11 by reason of an interest in a qualified tuition program.

(B) Amounts includible in estate of designated beneficiary in certain cases. – Subparagraph (A) shall not apply to amounts distributed on account of the death of a beneficiary.

(C) Amounts includible in estate of donor making excess contributions. – In the case of a donor who makes the election described in paragraph (2)(B) and who dies before the close of the 5-year period referred to in such paragraph, notwithstanding subparagraph (A), the gross estate of the donor shall include the portion of such

contributions properly allocable to periods after the date of death of the donor.

(5) Other gift tax rules. – For purposes of chapters 12 and 13 –

(A) Treatment of distributions. – Except as provided in subparagraph (B), in no event shall a distribution from a qualified tuition program be treated as a taxable gift.

(B) Treatment of designation of new beneficiary. – The taxes imposed by chapters 12 and 13 shall apply to a transfer by reason of a change in the designated beneficiary under the program (or a rollover to the account of a new beneficiary) only if the new beneficiary is a generation below the generation of the old beneficiary (determined in accordance with section 2651).

(d) Reports. – Each officer or employee having control of the qualified State tuition program or their designee shall make such reports regarding such program to the Secretary and to designated beneficiaries with respect to contributions, distributions, and such other matters as the Secretary may require. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by the Secretary.

(e) Other definitions and special rules. – For purposes of this section –

(1) Designated beneficiary. – The term "designated beneficairy" means –

(A) the individual designated at the commencement of participation in the qualified State tuition program as the beneficiary of amounts paid (or to be paid) to the program,

(B) in the case of a change in beneficiaries described in subsection (c)(3)(C), the individual who is the new beneficiary, and

(C) in the case of an interest in a qualified State tuition program purchased by a State or local government (or agency or instrumentality thereof) or an organization described in section 501(c)(3) and exempt from taxation under section 501(a) as part of a scholarship program operated by such government or organization, the individual receiving such interest as a scholarship.

(2) Member of family. – The term "member of the family" means, with respect to any designated beneficiary –

(A) the spouse of such beneficiary;

(B) an individual who bears a relationship to such beneficiary which is described in paragraphs (1) through (8) of section 152(a); and

(C) the spouse of any individual described in subparagraph (B).

(3) Qualified higher education expenses. –

(A) In general. – The term "qualified higher education expenses" means tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary at an eligible educational institution.

(B) Room and board included for students who are at least half-time. –

(i) In general. – In the case of an individual who is an eligible student (as defined in section 25A(b)(3)) for any academic period, such term shall also include reasonable costs for such period (as determined under the qualified State tuition program) incurred by the designated beneficiary for room and board while attending such institution. For purposes of subsection (b)(7), a designated beneficiary shall be treated as meeting the requirements of this clause.

(ii) Limitation. – The amount treated as qualified higher education expenses by reason of the preceding sentence shall not exceed the minimum amount (applicable to the student) included for room and board for such period in the cost of attendance (as defined in section 472 of the Higher Education Act of 1965, 20 U.S.C. 108711, as in effect on the date of the enactment of this paragraph) for the eligible educational institution for such period.

(4) Application of section 514. – An interest in a qualified State tuition program shall not be treated as debt for purposes of section 514.

(5) Eligible educational institution. – The term 'eligible educational institution' means an institution –

(A) which is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on the date of the enactment of this paragraph, and

(B) which is eligible to participate in a program under title IV of such Act.

CREDITS(S): 2001 Electronic Update

(Added Pub.L. 104-188, Title I, § 1806(a), Aug. 20, 1996, 110 Stat. 1895, and amended Pub.L. 105-34, Title II, § 211(a), (b), (d), (e)(2)(A), Title XVI, § 1601(b)(1)(a), (B), Aug. 5, 1997, 111 Stat. 810, 811, 812, 1092; Pub.L. 105- 206, Title VI, § 6004(c)(2), (3), July 22, 1998, 112 Stat. 793; Pub.L. 106- 554, § 1(a)(7) [Title III, § 319(5)]. Dec. 21, 2000, 114 Stat. 2763, 2763-___.)

UPDATING DOCUMENTS

1 Amended by *PL 107-16, June 7, 2001, 115 Stat 38.*

2. Amended by *PL 107-22, July 26, 2001, 115 Stat 196.*

PL 107-22 (S 1190)
July 26, 2001
COVERDELL EDUCATION SAVINGS ACCOUNTS

An Act To amend the Internal Revenue Code of 1986 to rename the education individual retirement accounts as the Coverdell education savings accounts.

PENDING LEGISLATION TO 26 U.S.C.A. § 529 QUALIFIED STATE TUITION PROGRAMS

1 *2001 CONG US S 1060,* 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide that certain postsecondary educational benefits provided by an employer to children of employees shall be excludable from gross income as part of an education (Jun 19, 2001), Introduced in Senate, Referenced.

2 *2001 CONG US S 1025,* 107th CONGRESS, 1st Session, To provide for savings for working families, (Jun 13, 2001), Introduced in Senate, Referenced.

3 *2001 CONG US HR 1990,* 107th CONGRESS, 1st Session, To leave no child behind. (May 26, 2001), Introduced in House, Technical or conforming amendment.

4 *2001 CONG US HR 1,* 107th CONGRESS, 1st Session (May 25, 2001), Placed on Calendar Senate, Referenced.

5 *2001 CONG US HR 1,* 107th CONGRESS, 1st Session, To close the achievement gap with accountability, flexibility, and choice, so that no child is left behind. (May 23, 2001), Engrossed in House, Referenced.

6 *2001 CONG US S 940,* 107th CONGRESS, 1st Session, To leave no child behind. (May 23, 2001), Introduced in Senate, Technical or conforming amendment.

7 *2001 CONG US S 904,* 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide an above-the-line deduction for qualified professional development expenses of elementary and secondary school teachers and to allow a credit against income ta [sic] (May 16, 2001), Introduced in Senate, Referenced.

8 *2001 CONG US S 896*, 107th CONGRESS, 1st Session, To Provide for reconciliation pursuant to section 103 of the concurrent resolution on the budget for fiscal year 2002 (H. Con. Res. 83). (May 16, 2001), Placed on Calendar Senate, Amended.

9 *2001 CONG US S 763*, 107th CONGRESS, 1st Session, (Report No. 107-12) To amend the Internal Revenue Code of 1986 to allow tax-free expenditures from education individual retirement accounts for elementary and secondary school expenses, to increase the maximum ann [sic] (Apr 24, 2001), Placed on Calendar Senate, Amended.

10 *2001 CONG US S 685*, 107th CONGRESS, 1st Session, To amend title IV of the Social Security Act to strengthen working families, and for other purposes. (Apr. 03, 2001), Introduced in Senate, Technical or conforming amendment.

11 *2001 CONG US HR 1308*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to allow tax-free expenditures from education individual retirement accounts for elementary and secondary school expenses, to increase the maximum annual amount of co [sic] (Mar 29, 2001), Introduced in House, Amended.

12 *2001 CONG US S 420*, 107th CONGRESS, 1st Session, (Mar 15, 2001), Engrossed in Senate, Referenced.

13 *2001 CONG US HR 1018*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide for economic growth by providing tax relief. (Mar 14, 2001), Introduced in House, Amended.

14 *2001 CONG US S 458*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to make higher education more affordable, and for other purposes. (Mar 06, 2001), Introduced in Senate, Referenced.

15 *2001 CONG US HR 333*, 107th CONGRESS, 1st Session (Mar 05, 2001), Placed on Calendar Senate, Referenced.

16 *2001 CONG US S 420*, 107th CONGRESS, 1st Session, To amend title 11, United States Code, and for other purposes. (Mar 01, 2001), Placed on Calendar Senate, Referenced.

17 *2001 CONG US HR 333*, 107th CONGRESS, 1st Session, To amend title 11, United States Code, and for other purposes. (Mar 01, 2001), Engrossed in House, Referenced.

18 *2001 CONG US HR 333*, 107th CONGRESS, 1st Session, (Report No. 107-3, Part I) To amend title 11, United States Code, and for other purposes. (Feb 26, 2001), Reported in House, Referenced.

19 *2001 CONG US S 335*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide an exclusion from gross income for distributions from qualified State tuition programs which are used to pay education expenses, and for other purposes. (Feb 14, 2001), Introduced in Senate, Amended.

20 *2001 CONG US HR 636*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to permit private educational institutions to maintain qualified tuition programs which are comparable to qualified State tuition programs, and for other purposes. (Feb 14, 2001), Introduced in House, Amended.

21 *2001 CONG US HR 703*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide incentives to public elementary and secondary school teachers by providing a tax credit for teaching expenses, professional development expenses, and studen [sic] (Feb 14, 2001), Introduced in House, Referenced.

22 *2001 CONG US S 306*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to expand the use of education individual retirement accounts, and for other purposes. (Feb 13, 2001), Introduced in Senate, Referenced.

23 *2001 CONG US HR 538*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide tax incentives for education. (Feb 08, 2001), Introduced in House, Amended.

24 *2001 CONG US HR 549*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide additional tax incentives for education. (Feb 08, 2001), Introduced in House, Amended.

25 *2001 CONG US S 289*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide additional tax incentives for education. (Feb 08, 2001), Introduced in Senate, Amended.

26 *2001 CONG US HR 414*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to make the Hope and Lifetime Learning Credits refundable, and to allow taxpayers to obtain short-term student loans by using the future refund of such credits as coll [sic] (Feb 06, 2001), Introduced in House, Technical or conforming amendment.

27 *2001 CONG US HR 475*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to allow a deduction for amounts paid to any qualified State tuition program and to provide that distributions from such programs which are used to pay education exp [sic] (Feb 06, 2001), Introduced in House, Amended.

28 *2001 CONG US S 225*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide incentives to public elementary and secondary school teachers by providing a tax credit for teaching

expenses, professional development expenses, and student e [sic] (Jan 31, 2001), Introduced in Senate, Referenced.

29 *2001 CONG US HR 333*, 107th CONGRESS, 1st Session, To amend title 11, United States Code, and for other purposes, (aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or neg [sic] (Jan 31, 2001), Introduced in House, Referenced.

30 *2001 CONG US S 203*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide an above-the-line deduction for qualified professional development expenses of elementary and secondary school teachers and to allow a credit against income ta [sic] (Jan 30, 2001), Introduced in Senate, Referenced.

31 *2001 CONG US HR 248*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide that distributions from qualified State tuition programs which are used to pay educational expenses shall not be includable in gross income. (Jan 30, 2001), Introduced in House, Amended.

32 *2001 CONG US HR 249*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to permit private educational institutions to maintain qualified tuition programs and to provide that distributions from such programs which are used to pay educationa [sic] (Jan 30, 2001), Introduced in House, Amended.

33 *2001 CONG US S 9*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide tax relief, and for other purposes. (Jan 22, 2001), Introduced in Senate, Technical or conforming amendment.

34 *2001 CONG US S 35*, 107th CONGRESS, 1st Session, To provide relief to America's working families and to promote continued economic growth by returning a portion of the tax surplus to those who created it. (Jan 22, 2001), Introduced in Senate, Referenced.

35 *2001 CONG US S 8*, 107th CONGRESS, 1st Session, To improve the economic security of workers, and for other purposes. (Jan 22, 2001), Introduced in Senate, Technical or conforming amendment.

36 *2001 CONG US HR 102*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to encourage stronger math and science programs at elementary and secondary schools. (Jan 03, 2001), Introduced in House, Referenced.

37 *2001 CONG US HR 167*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to allow unused benefits from cafeteria plans to be carried over into later years and used for health care reimbursement rollover accounts and certain other plans, arr [sic] (Jan 03, 2001), Introduced in House, Exception created.

38 *2001 CONG US HR 84*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to provide tax incentives for education. (Jan 03, 2001), Introduced in House, Amended.

39 *2001 CONG US HR 86*, 107th CONGRESS, 1st Session, To amend the Internal Revenue Code of 1986 to restructure and replace the income tax system of the United States to meet national priorities, and for other purposes. (Jan 03, 2001), Introduced in House, Amended.

28 U.S.C.A. § 2403(a-b)

§ 2403. Intervention by United States or a State; constitutional question

(a) In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

(b) In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interests is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

42 USCA § 405

UNITED STATES CODE ANNOTATED TITLE 42. THE PUBLIC HEALTH AND WELFARE CHAPTER 7 – SOCIAL SECURITY SUBCHAPTER II – FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS § 405. Evidence, procedure, and certification for payments

42 USCA § 405(c)(2)(C)(ii)

*** * * A State shall not use any social security account number, obtained with respect to the issuance by the State of a birth certificate, for any purpose other than for the enforcement of child support orders in effect in the State, unless section 7(a) of the Privacy Act of 1974 does not prohibit the State from requiring the disclosure of such number, by reason of the State having adopted, before January 1, 1975, a statute or regulation requiring such disclosure.**

* * *

42 USCA § 405

UNITED STATES CODE ANNOTATED TITLE 42. THE PUBLIC HEALTH AND WELFARE CHAPTER 7 – SOCIAL SECURITY SUBCHAPTER II – FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS § 405. Evidence, procedure, and certification for payments

42 U.S.C. § 405(c)(2)(C)(viii)(I) ("Social Security account numbers and related records that are obtained or maintained by authorized personnel . . . shall be confidential, and no authorized person shall disclose any such social security account number or related record.")

APPENDIX G

FEDERAL RULES OF CIVIL PROCEDURE

FED R. Civ. Proc. 23

* * *

Fed.R.Civ.Proc. 23(c)(4)(A)

(4) When appropriate (A) an action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

* * *

ADVISORY COMMITTEE NOTES

* * *

- Subdivision (c)(4). This provision recognizes that an action may be maintained as a class action as to particular issues only. For example, in a fraud or similar case the action may retain its "class" character only through the adjudication of liability to the class; the members of the class may thereafter be required to come in individually and prove the amounts of their respective claims.

BALDWIN'S OHIO REVISED CODE ANNOTATED
RULES OF CIVIL PROCEDURE
TITLE III PLEADINGS AND MOTIONS

CIV R 7 PLEADINGS AND MOTIONS

* * *

(B) Motions

(1) An application to the court for an order shall be by motion which, unless made during a hearing or a trial, shall be made in writing. A motion, whether written or oral, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

* * *

Aside

1. Use with Civ. R. 53 to defeat adequate and independent test re alleged procedural defect in raising disclosural rights claims.

Issues Class Action

[Civ. R. 23(C)(4)(a)]

Ohio Rules of Civil Procedure

CIV R 23 CLASS ACTIONS

(A) Prerequisites to a class action

One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or face common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(B) Class actions maintainable

An action may be maintained as a class action if the prerequisites of subdivision (A) are satisfied, and in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of

(a) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

(b) adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (d) the difficulties likely to be encountered in the management of a class action.

(C) Determination by order whether class action to be maintained; notice; judgment; actions conducted partially as class actions

(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subdivision may be conditional, and may be altered or amended before the decision on the merits.

(2) In any class action maintained under subdivision (B)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be

identified through reasonable effort. The notice shall advise each member that (a) the court will exclude him from the class if he so requests by a specified date; (b) the judgment, whether favorable or not, will include all members who do not request exclusion; and (c) any member who does not request exclusion may, if he desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subdivision (B)(1) or (B)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subdivision (B)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subdivision (C)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate (a) an action may be brought or maintained as a class action with respect to particular issues, or (b) a class may be divided into subclasses and each subclass treated as a class, and the provisions of this rule shall then be construed and applied accordingly.

* * *

APP R 30 DUTIES OF CLERKS

* *

(B) Custody of records and papers

The clerk shall have custody of the records and papers of the court. Papers transmitted as the record on appeal or review shall upon disposition of the case be returned to the court or agency from which they were received. The clerk shall preserve copies of briefs and other filings.

BALDWIN'S OHIO REVISED CODE ANNOTATED
RULES OF CIVIL PROCEDURE
TITLE VI TRIALS

CIV R 53 MAGISTRATES

(A) Appointment

**[Civ. R. 53(E)(4)(b) (App. 376)
Mandates reviewable order on objections]**

* * *

(C) Reference and Powers

(1) Order of reference

(a) A court of record may by order refer any of the following to a magistrate:

(i) any pretrial or post-judgment motion in any case;

(ii) the trial of any case that will not be tried to a jury; and

(iii) upon the unanimous written consent of the parties, the trial of any case that will be tried to a jury.

Except as provided in division (C)(1)(a)(iii) of this rule, the effect of a magistrate's order or decision is the same regardless of whether the parties have consented to the order of reference.

(b) Subject to division (C)(1)(a)(ii) and (iii) of this rule, an order of reference may be specific to a particular case or may refer categories of motions or cases.

(c) The order of reference to a magistrate may do all of the following:

(i) specify or limit the magistrate's powers;

(ii) direct the magistrate to report only upon particular issues, do or perform particular acts, or receive and report evidence only;

(iii) fix the time and place for beginning and closing the hearings and for the filing of the magistrate's decision.

(2) General powers

Subject to the specifications and limitations stated in the order or reference, the magistrate shall regulate all proceedings in very hearing as if by the court and do all acts and take all measures necessary or proper for the efficient performance of the magistrate's duties under the order. The magistrate may do all of the following:

* * *

(3) Power to enter orders

(a) Pretrial orders. Unless otherwise specified in the order of reference, the magistrate may enter orders without judicial approval in pretrial proceedings under Civ. R. 16, in discovery proceedings under Civ. R. 26 to 37, temporary restraining orders under Civ. R. 75(I), in hearings under Civ. R. 75(N), and other orders as necessary to regulate the proceedings.

(b) Appeal of pretrial orders. Any person may appeal to the court from any order of a magistrate entered under division (C)(3)(a) of this rule by filing a motion to set the order aside, stating the party's objections with particularity. The motion shall be filed no later than ten days after the magistrate's order is entered. The

pendency of a motion to set aside does not stay the effectiveness of the magistrate's order unless the magistrate or the court grants a stay.

* * *

(d) Other orders. Unless prohibited by the order of reference, a magistrate shall continue to be authorized to enter orders when authority is specifically conveyed by statute to magistrates.

(e) Form of magistrate's orders. All orders of a magistrate shall be in writing, signed by the magistrate, identified as a magistrate's order in the caption, filed with the clerk, and served on all parties or their attorneys.

(D) Proceedings

(1) All proceedings before the magistrate shall be in accordance with these rules and any applicable statutes, as if before the court.

(2) Except as otherwise provided by law, all proceedings before the magistrate shall be recorded in accordance with procedures established by the court.

(E) Decisions in referred matters

Unless specifically required by the order of reference, a magistrate is not required to prepare any report other than the magistrate's decision. Except as to those matters on which magistrates are permitted to enter orders without judicial approval pursuant to division (C)(3) of this rule, all matters referred to magistrates shall be decided as follows:

(1) Magistrate's decision

The magistrate promptly shall conduct all proceedings necessary for decision of referred matters. The magistrate shall prepare, sign, and file a magistrate's decision of the referred matter with the clerk, who shall serve copies on all the parties or their attorneys.

(2) Findings of fact and conclusions of law

If any party makes a request for findings of fact and conclusions of law under Civ. R. 52 or if findings and conclusions are otherwise required by law or by the order of reference, the magistrate's decision shall include findings of act and conclusions of law. If the request under Civ. R. 52 is made after the magistrate's decision is filed, the magistrate shall include the findings of fact and conclusions of law in an amended magistrate's decision.

(3) Objections

(a) Time for filing. Within fourteen days of the filing of a magistrate's decision, a party may file written objections to the magistrate's decision. If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. If a party makes a request for findings of fact and conclusion of law under Civ. R. 52, the time for filing objections begins to run when the magistrate files a decision including findings of fact and conclusions of law.

(b) Form of objections. Objections shall be specific and state with particularity the grounds of objection. If the parties stipulate in writing that the magistrate's findings of fact shall be final, they may object only to errors of law in the magistrate's decision. Any objection to a

finding of fact shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that fact or an affidavit of that evidence if a transcript is not available. A party shall not assign as error on appeal the court's adoption of any finding of fact or conclusion of law unless the party has objected to that finding or conclusion under this rule.

(4) Court's action on magistrate's decision

(a) When effective. The magistrate's decision shall be effective when adopted by the court. The court may adopt the magistrate's decision if no written objections are filed unless it determines that there is an error or law or other defect on the face of the magistrate's decision.

(b) Dispositions of objections. The court shall rule on any objections. The court may adopt, reject, or modify the magistrate's decision, hear additional evidence, recommit the matter to the magistrate with instructions, or hear the matter. The court may refuse to consider additional evidence proffered upon objections unless the objecting party demonstrates that with reasonable diligence the party could not have produced that evidence for the magistrate's consideration.

(c) Permanent and interim orders. The court may adopt a magistrate's decision and enter judgment without waiting for timely objections by the parties, but the filing of timely written objections shall operate as an automatic stay of execution of that judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered. The court may make an interim order on the basis of the magistrate's decision without waiting for or ruling on timely

objections by the parties where immediate relief is justified. An interim order shall not be subject to the automatic stay caused by the filing of timely objections. An interim order shall not extend more than twenty-eight days from the date of its entry unless, within that time and for good cause shown, the court extends the interim order for an additional twenty-eight days.

COMMENTARY

Staff Notes

1998:

* * *

Rule 53(E) Decisions in referred matters

The 1998 amendment was to division (E)(4)(b) of this rule. The amendment was made because some trial judges apparently had avoided ruling upon objections to magistrates' reports since the previous rule appeared to require only "consideration" of the objections. The amendment should clarify that the judge is to rule upon, not just consider, any objections.

* * *

1975:

As amended January 10, 1975, the subdivision was rewritten to provide that a party had five days from the filing of the referee's report within which to file objections to the report. In that amendment, the language employed was revised for the purposes of clearer expression. For example, **under the amendment, the objections are to be considered as a motion as opposed to the prior**

provision that the objections be by motion. The latter could be interpreted as requiring a motion separate from, but seeking action on, objections to the report.

When objections to a referee's report are considered as a motion, they are to be served and filed as a motion, thus the specific reference to Civ. R. 6(D) is unnecessary.

* * *

Aside:

1. Use Civ. R. 53(E)(4)(b) with Civ. R. 7 in event *Lang* presumption is not applied and *Johnson, Barr, Hathorn* adequacy test is applied. Please lag a determination of jurisdiction until review of the record, if necessary, since this already massive petition omits room to submit more detail. Deficiencies in pleadings are not to derail substantive matters, since this pro se clearly lacks knowledge. With petition printing costs already over a crippling $11,500.00+ Petitioner pleads for the courts' forgiveness for errors and omissions and relies on *M.L.B., Boddie, Mayer, Griffin,* for economic understanding.

APPENDIX H

OHIO STATUTES

R.C. § 149.43 (public records)

(A) As used in this section:

(1) "Public record" means any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, except that "public record" does not mean any of the following:

(a) Medical records;

* * *

(g) Trial preparation records;

* * *

(v) Records the release of which is prohibited by state or federal law.

* * *

(3) **"Medical record" means any document or combination of documents,** except births, deaths, and the fact of admission to or discharge from a hospital, **that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient** and that is generated and maintained in the process of medical treatment.

(4) "Trial preparation record" means any record that contains information that is specifically compiled in reasonable anticipation of, or in defense of, a civil or criminal action or proceeding, including the independent thought processes and personal trial preparation of an attorney.

* * *

(B)(1) Subject to division (B)(4) of this section, **all public records** shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(4) of this section, upon request, a public office or person responsible for public records shall make copies available at cost, within a reasonable period of time. In order to facilitate broader access to public records, public offices shall maintain public records in a manner that they can be made available for inspection in accordance with this division.

* * *

CREDIT(S)

(2000 S 180, eff. 3-22-01; 2000 H 448; eff. 10-5-00; 2000 H 640, eff. 9-14-00; 2000 H 539, eff. 6-21-00; 1999 H 471, eff. 7-1-00; 1999 S 78; eff. 12-16-99; 1999 S 55, eff. 10-26-99; 1998 H 421, eff. 5-6-98; 1997 H 352, eff. 1-1-98; * * *)

UNCODIFIED LAW

1999 S 78, § 3, eff. 12-16-99, reads:

Division (B) of section 149.43 of the Revised Code, as amended by this act, shall apply only to requests for the inspection or copying of public records or releases of information made on or after the effective date of that section.

OH ST § 2303.03
RC § 2303.03

2303.03 CLERK OF COURT OF COMMON PLEAS TO SERVE AS CLERK OF COURT OF APPEALS; * * *

(A) The clerk of the court of common pleas in each county also shall be clerk of the court of appeals of the county and, subject to division (B) of this section and while acting as the clerk of the court of appeals of the county and assuming the duties of that office, shall collect the same fees that the clerk otherwise collects and perform the same general duties that the clerk otherwise performs.

* * *

CREDIT(S): (1996 H 455, eff. 10-17-96; 1989 H 552, eff. 7-14-89; 1988 H 531; 1977 H 262; 1953 H 1; GC 2869)

UNCODIFIED LAW

1989 H 552, § 6, eff. 7-14-89, reads: The amendments made to sections 2303.03 and 2501.17 of the Revised Code by Section 1 of this act are intended as clarifications of the amount of additional compensation that is to be provided to the clerk of the court of common pleas in each county for acting as the clerk of the court of appeals in the county and assuming the duties of that office, as enacted in Am. H.B. 531 of the 117th General Assembly, and are not intended as substantive changes in law or as a grant of additional compensation that was not contemplated by the 117th General Assembly in its enactment of that act. The amendments to those sections made by

Section 1 of this act shall apply in determining the additional compensation to be provided to the clerk of the court of common pleas for each county for all time spent, on or after January 1, 1989, acting as the clerk of the court of appeals of the county and assuming the duties of that office.

OH ST § 2303.08
R.C. § 2303.08

2303.08 GENERAL DUTIES

The clerk of the court of common pleas shall indorse on each pleading or paper in a cause filed in the clerk's office the time of filing, enter all orders, decrees, judgments, and proceedings of the courts of which such individual is the clerk, make a complete record when ordered on the journal to do so, and pay over to the proper parties all moneys coming into the clerk's hands as clerk. The clerk may refuse to accept for filing any pleading or paper submitted for filing by a person who has been found to be a vexatious litigator under section 2323.52 of the Revised Code and who has failed to obtain leave to proceed under that section.

Aside:

1. Duties of clerk of courts do not seem to enable Internet release by statute, or App. R. 30.

OH ST § 2303.26
R.C. § 2303.26

2303.26 DUTIES OF CLERK

The clerk of the court of common pleas shall exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law; and in the performance of his duties he shall be under the direction of his court.

OH ST § 2303.31
R.C. § 2303.31

2303.31 CLERKS OF OTHER COURTS

The duties prescribed by law for the clerk of the court of common pleas shall, so far as they are applicable, apply to the clerks of other courts of record.

[Compare Two Versions Of § 3103.03(B), With § 3119.86]

R.C. 3103.03 (Duty to Support)

(A) * * * The biological or adoptive parent of a minor child must support the parent's minor children out of the parent's property or by the parent's labor.

(B) Notwithstanding *section 3109.01 of the Revised Code* and to the extent provided in section 3319.86 of the Revised Code, the parental duty of support to children shall continue beyond the age of majority as long as the child continuously attends on a full-time basis any recognized and accredited high school. That duty of support shall continue during seasonal vacation periods.

* * *

(D) If a parent neglects to support the parent's minor child in accordance with this section and if the minor child in question is unemancipated, any other person, in good faith, may supply the minor child with necessaries for the support of the minor child and recover the reasonable value of the necessaries supplied from the parent who neglected to support the minor child.

* * *

CREDIT(S): (2000 S 180, eff. 3-22-01; 1997 H 352, eff. 1-1-98; 1996 H 538, eff. 1-1-97; 1992 S 10, eff. 7-15-92; 1990 S 3, H 346; * * *)

HISTORICAL AND STATUTORY NOTES

Amendment Note: 2000 S 180 rewrote division (B) which prior thereto read:

"(B) Notwithstanding *section 3109.01 of the Revised Code*, the parental duty of support to children, including the

duty of a parent to pay support pursuant to a child support order, shall continue beyond the age of majority as long as the child continuously attends on a full-time basis any recognized and accredited high school or a court-issued child support order provides that the duty of support continues beyond the age of majority. Except in cases in which a child support order requires the duty of support to continue for any period after the child reaches age nineteen, the order shall not remain in effect after the child reaches age nineteen. That duty of support shall continue during seasonal vacation periods."

Amendment Note: 1997 H 352 inserted or a court-issued child support order provides that the duty of support continues beyond the age of majority" and added the second sentence in division (B); * * *

Aside:

1. See *Aside*, App. 393.
2. Even prior to Am. Sub. H.B. 352, duty of support extended past general age of majority R.C. § 3109.01 (App. 393) for STUDENTS STILL in high school; the bright line of 18 has long been dark.
3. One could argue age 19 was post, H.B. 352, "effective" age of majority, unless order extended such "effective" age further; surely this does not mean a child is cut-off from college support after his first year.

R.C. § 3105.011 Domestic Relations' Equity Powers & Jurisdiction

The court of common pleas including divisions of courts of domestic relations, has full equitable powers and jurisdiction appropriate to the determination of all domestic relations matters. This section is not a determination by the general assembly that such equitable powers and jurisdiction do not exist with respect to any such matter.

Aside:

1. Court's powers and jurisdiction not statutorily tied to duration of parental responsibilities or duration of duty to support.
2. Consider jurisdiction with 28 U.S.C. § 1738B.

OH ST § 3105.10 (Enforcement of Separation Agreement Providing for Child Support.)

* * *

(B)(1) A separation agreement providing for the support of children eighteen years of age or older is enforceable by the court of common pleas.

(2) A separation agreement that was voluntarily entered into by the parties may be enforceable by the court of common pleas upon the motion of either party to the agreement, if the court determines that it would be in the interests of justice and equity to require enforcement of the separation agreement.

* * *

CREDIT(S): (1990 H 514, eff. 1-1-91; 1975 H 370; * * *)

Aside:

1. Use with 3105.65(B) (App. 392), enabling modification of previous agreements, which authority to modify is limited to parents who either *dissolve* a marriage, R.C. §§ 3105.61, 3105.63 (call for record to see many cases demonstrating equal protection violations), *or execute a Separation Agreement* which Agreement-based privileges were not accorded to parents similarly situated lacking the personal characteristic of ability to agree during parental litigation.
2. A Separation Agreement requires 100% Agreement on all matters (i.e., parenting time, property, support).
3. Parties in instant case reached agreement on parenting time and property.

R.C. 3105.21 (Court's Mandatory Duty to Order)

(A) Upon satisfactory proof of the causes in the complaint for divorce, annulment, or legal separation, the court of common pleas shall make an order for the disposition, care, and maintenance of the children of the marriage, as is in their best interests, and in accordance with section 3109.04 of the Revised Code.

(B) Upon the failure of proof of the causes in the complaint, the court may make the order for the disposition, care, and maintenance of *any dependent child* of the marriage as is in the child's best interest, and in accordance with section 3109.04 of the Revised Code.

(C) Any court of common pleas that makes or modifies an order for child support under this section shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code.

* * *

CREDIT(S): (2000 S 180, eff. 3-22-01; 1997 H 352, eff. 1-1-98; * * *)

HISTORICAL AND STATUTORY NOTES

* * *

Amendment Note: 2000 S 180 rewrote division (C) and deleted division (D). Prior to amendment and deletion divisions * * * (D) read:

* * *

"(D) Notwithstanding section 3109.01 of the Revised Code, if a court issues a child support order under this

section, the order shall remain in effect beyond the child's eighteenth birthday as long as the child continuously attends on a full-time basis any recognized and accredited high school **or the order provides that the duty of support of the child continues beyond the child's eighteenth birthday**. Except in cases in which the order provides that the duty of support continues for any period after the child reaches age nineteen, the order shall not remain in effect after the child reaches age nineteen. Any parent ordered to pay support under a child support order issued under this section shall continue to pay support under the order, including during seasonal vacation periods, until the order terminates."

Amendment Note: 1997 H 352 * * * inserted "or the order provides that the duty of support of the child continues beyond the child's eighteenth birthday" and added the second sentence in division (D); * * *

* * *

Aside:

1. See *Aside,* App. 393.

R.C. 3105.65 (Continuing Modification Jurisdiction Over Agreements Has Long Enabled Later College Orders, to Issue)

(B) * * * The court has full power to enforce its decree and retains jurisdiction **to modify all matters pertaining to the allocation of parental rights and responsibilities** for the care of the children, to the designation [sic] a residential parent and legal custodian of the children, **to child support**, to parenting time of parents with the children, and to visitation for persons who are not the children's parents. The court, only in accordance with division (E)(2) of section 3105.18 of the revised Code, may modify the amount or terms of spousal support.

* * *

CREDIT(S): (2000 S 180, eff. 3-22-01; 1990 S 3, eff. 4-11-91; 1990 H 514, S 25; 1986 H 358; 1975 H 370; 1974 H 233)

Aside:

1. Importantly, *not limited* to minority of children, (12/99 version).
2. Long empowering courts to make college orders (call for record), with explicit interpretation which empower post majority college support orders (12/99 version).
3. Power emasculated via 3/22/01 changes of courts here, and to R.C. 3119.86 et al. to try to thwart benefits to disadvantaged classes.
4. Must compare two versions of this since some was omitted here.

Aside:

R.C. 3109.01 (General Age of Majority)

All persons of the age of eighteen years or more, who are under no legal disability, are capable of contracting and are of full age for all purposes.

CREDIT(S): (1973 S 1, eff. 1-1-74; 1953 H 1; GC 8005-1; Source – GC 8023)

[Compare with effective age of majority for support purposes; R.C. § 3109.05(E) (App. 400), repealed 3/22/01]

1. Duration of courts' authority to order not limited to minority 12/99 version.

2. Duration of parental duty to support, R.C. § 3103.03(B) (App. 386-387), 12/99 version amended 3/22/01.

3. Duration of courts' mandatory duty to order extends through dependency, R.C. § 3105.21(D) (App. 390-391); repealed 3/22/01. As further unconstitutionally displaced via R.C. §§ 3119.86, 3119.88 (App. 414-417), 3/22/01 version of 3103.03(B).

RC 3109.03 (Equality of Parental Responsibilities)

When husband and wife are living separate and apart from each other, or are divorced, and the question as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children is brought before a court of competent jurisdiction, they shall stand upon an equality as to the parental rights and responsibilities for the care of their children and the place of residence and legal custodian of their children, so far as parenthood is involved.

CREDIT(S): (1990 S 3, eff. 4-11-91; 1953 H 1; GC 8005-3; Source – GC 8032)

Aside:

1. No limitation to "minor" children.
2. Second, parental responsibilities' statutes, § 3109.04, restricted to minor children (App. 395), with a third statute, which codified legislative findings, R.C. § 3109.401 (App. 403) as to parental responsibilities.

R.C. § 3109.04 (Parental Responsibilities for Minors)

(A) In any divorce, * * * and in any proceeding pertaining to the allocation of parental rights and responsibilities for the care of a child, * * * and in accordance with *sections 3109.21* to *3109.36 of the Revised Code*, the court shall allocate the parental rights and responsibilities for the care of the *minor children* of the marriage.

* * *

(2) * * * The child support obligations of the parents under a shared parenting order issued under this division shall be determined in accordance with Chapters 3119., 3121., 3123., and 3125 [formerly section 3113.215] of the Revised Code.

(B)(1) When making the allocation of the parental rights and responsibilities for the care of the children under this section in an original proceeding or in any proceeding for modification of a prior order of the court making the allocation, the court shall take into account that which would be in the best interest of the children.

* * *

(d) If a court approves a shared parenting plan under division (D)(1)(a)(i), (ii), or (iii) of this section, the approved plan shall be incorporated into a final shared parenting decree granting the parents the shared parenting of the children. Any final shared parenting decree shall be issued at the same time as and shall be appended to the final decree of dissolution, divorce, annulment, or legal separation arising out of the action out of which the question of the allocation of parental rights and responsibilities for the care of the children arose.

* * *

(E)(2)(b) The court may modify the terms of the plan for shared parenting approved by the court and incorporated by it into the shared parenting decree upon its own motion at any time if the court determines that the modifications are in the best interest of the children or upon the request of one or both of the parents under the decree. **Modifications under this division may be made at any time. The court shall not make any modification to the plan under this division, unless the modification is in the best interest of the children.**

* * *

(F)(1) In determining the best interest of a child pursuant to this section, whether on an original decree allocating parental rights and responsibilities for the care of children or a modification of a decree allocating those rights and responsibilities, the court shall consider all relevant factors, including, but not limited to:

* * *

(d) The child's adjustment to the child's home, **school**, and community;

* * *

(F)(2) In determining whether shared parenting is in the best interest of the children, the court shall consider all relevant factors, including, but not limited to, the factors enumerated in division (F)(1) of this section, the factors enumerated in *section 3119.23 of the Revised Code*, and all of the following factors:

* * *

(G) * * * A plan for shared parenting shall include provisions covering all factors that are relevant to the care of the children, including but not limited to, provisions covering factors such as physical living arrangements, child support obligations, provision for the children's medical and dental care, **school placement**, and

* * *

(J) As used in the Revised Code, "shared parenting" means that the parents share, in the manner set forth in the plan for shared parenting that is approved by the court under division (D)(1) and described in division (K)(6) of this section, all or some of the aspects of physical and legal care of their children.

* * *

CREDIT(S): (2000 S 180, eff. 3-22-01; 1994 H 415, eff. 11-9-94; 1993 S 115, eff. 10-12-93; 1990 S 3, H 514, H 591; * * *)

Amendment Note: 2000 S 180 substituted "Chapters 3119., 3121., 3123., and 3125.," for "section 3113.215" in division (A)(2); inserted "court-approved parenting time rights or" and deleted "approved by the court" after "companionship rights" in division (F)(1)(f); substituted "parent's" for "parent his or her" and "parenting time" for "visitation" in division (F)(1)(i); deleted "division (B)(3) of" after "enumerated" and substituted '3119.23" for "3113.215" in division (F)(2); * * *

Aside:

1. § 3109.04(A) uses phrase "minor children."
2. § 3109.04(G) requires school placement in plan.

R.C. § 3109.05 (Court's Powers in Authority to Render Judicial Determination of Emancipation Castrated, 3/22/01, via Deletion of R.C. 3109.05(E) ("or the order provides"))

(A)(1) In a divorce, dissolution of marriage, legal separation, or child support proceeding, the court may order either or both parents to support or help support their *children,* * * * . **In determining the amount reasonable or necessary for child support, including the medical needs of the child, the court shall comply with Chapter 3119. of the Revised Code.**

(2) The court, in accordance with Chapter 3119. of the Revised Code, shall include in each support order made under this section the requirement that **one or both of the parents provide for the health care needs of the child to the satisfaction of the court,** and the court shall include in the support order a requirement that all support payments be made through the office of child support in the department of job and family services.

(3) The court shall comply with Chapters 3119., 3121., 3123., and 3125. of the Revised Code when it makes or modifies an order for child support under this section.

* * *

(D) * * *

CREDIT(S): (2000 S 180, eff. 3-22-01; 1999 H 471, eff. 7-1-00; 1997 H 352, eff. 1-1-98; 1993 H 173, eff. 12-31-93; 1993 S 115; * * *)

HISTORICAL AND STATUTORY NOTES

Amendment Note: 2000 S 180 substituted "Chapter 3119" for "sections 3113.21 to 3113.219" in division (A)(1)

and (A)(2); rewrote division (A)(3); substituted "3123.17" for "3113.219"; rewrote division (D); **and deleted division (E)**. Prior to amendment or deletion divisions (A)(3), (D), and (E) read:

* * *

"(E) Notwithstanding **section 3109.01 of the Revised Code,** if a court issues a child support order under this section, the order shall remain in effect beyond the child's eighteenth birthday as long as the child continuously attends on a full-time basis any recognized and accredited high school **or the order provides that the duty of support of the child continues beyond the child's eighteenth birthday. Except in cases in which the order provides that the duty of support continues for any period after the child reaches age nineteen,** the order shall not remain in effect after the child reaches age nineteen. Any parent ordered to pay support under a child support order issued under this section shall continue to pay support under the order, including during seasonal vacation periods, until the order terminates."

* * *

Amendment Note: 1997 H 352 * * * **inserted "or the order provides that the duty of support of the child continues beyond the child's eighteenth birthday" and added the second sentence in division (E);**

* * *

Amendment Note: 1993 S 115 rewrote division (A)(1), which previously read:

"(A)(1) In a divorce, dissolution of marriage, legal separation, or child support proceeding, the court may order

either or both parents to support or help support their children, without regard to marital misconduct. In determining the amount reasonable or **necessary for child support, including the medical needs of the child, the court shall comply with sections 3113.21 to 3113.219 of the Revised Code and shall consider all** relevant factors, including, but not limited to, all of the following:

"(a) The financial resources and the earning ability of the child;

"(b) The relative financial resources, other assets and resources, and needs of the residential parent and of the parent who is not the residential parent, when a decree for shared parenting is not issued;

"(c) The standard of living and circumstances of each parent and the standard of living the child would have enjoyed had the marriage continued;

"(d) The physical and emotional condition and needs of the child;

"(c) The financial resources, other assets and resources, and needs of both parents, when a decree for shared parenting is issued;

"(f) The need and capacity of the child for an education, and the educational opportunities that would have been available to him had the circumstances requiring a court order for his support not arisen;

"(g) The earning ability of each parent;

"(h) The age of the child;

"(i) The responsibility of each parent for the support of others;

"(j) The value of services contributed by the residential parent."

Aside:

1. Not limited to minor children.

2. Pre 1993 factors list similar to that long employed by New Jersey to make college orders is widely followed, *Newburgh v. Arrigo*, 88 N.J. 529, 443 A.2d 1031 (N.J. 1982), as followed by many courts, i.e., see Alabama's Exparte Bayliss College Support Case (1989), for problems with such factor-methodology see North Dakota Supreme Court's *Donarski v. Donarski* college support decision (1998).

3 § 3109.05(E) (App. 400) (now repealed) is most important, construe with former 3013.03(B) (App. 386-387), 3119.05(F) (App. 407) (intact § 3113.215(B)(5)(f)), repealed § 3105.21(D) (App. 390-391). Effect of S.B. 180, 3/22/2001 is unconstitutional, and *more so* when effect on § 3105.65(B) (App. 392) and § 3105.10(B) (App. 389) is considered (entire class of parents and children stripped of college support privileges as case enters Eleventh Hour . . .).

R.C. 3109.401 (Legislative Findings)

(A) The general assembly finds the following:

(1) That the parent and child relationship is of fundamental importance to the welfare of a child, and that the **relationship between a child and each parent should be fostered unless inconsistent with the child's best interests;**

(2) That parents have the responsibility to make decisions and perform other parenting functions necessary for the care and growth of their children;

(3) That the courts, when allocating parenting functions and responsibilities with respect to the child in a divorce, dissolution of marriage, legal separation, annulment, or any other proceeding addressing the allocation of parental rights and responsibilities, must determine the child's best interests;

(4) That the courts and parents must take into consideration the following general principles when allocating parental rights and responsibilities and developing appropriate terms for parenting plans:

(a) Children are served by a parenting arrangement that best provides for a child's safety, emotional growth, health, stability, and physical care.

(b) Exposure of the child to harmful parental conflict should be minimized as much as possible.

(c) Whenever appropriate, parents should be encouraged to meet their responsibilities to their children through agreements rather than by relying on judicial intervention.

(d) When a parenting plan provides for mutual decision-making responsibility by the parents but they are unable to make decisions mutually, they should make a good faith effort to utilize the mediation process as required by the parenting plan.

* * *

(B) It is, therefore, the purpose of this chapter, when it is in the child's best interest, to foster the relationship between the child and each parent when a court allocates parental rights and responsibilities with respect to the child in a divorce, dissolution, legal separation, annulment, or any other proceeding addressing the allocation of parental rights and responsibilities.

* * *

CREDIT(S): (2000 H 548, eff. 3-22-01; 1999 H 471, eff. 7-1-00; 2000 S 245, eff. 3-30-00; 1998 H 770, eff. 6-17-98; 1998 S 112, eff. 9-1-98)

Aside:

1. Emancipation is to be a judicial determination as are all judicial findings. Petitioner testified multiple times before Ohio Senate Judiciary Committee on all matters.

R.C. 3113.215 (Orders To Be Made in Best Interests of Child)

[Repealed by S.B. 180, post decree, 3/22/01 – see O.R.C. 3119]

CREDIT(S): (2000 S 180, eff. 3-22-01; 2000 H 495, § 5, eff. 7-1-00; 2000 H 495, § 1, eff. 5-9-00; 1999 H 471, eff. 7-1-00; 1997 H 352, eff. 1-1-98; 1997 H 408, eff. 10-1-97; 1996 H 670, eff. 12-2-96; 1996 H 710, § 8, eff. 8-8-96; 1996 H 710, § 7, eff. 6-11-96; 1996 H 274, § 7, eff. 8-8-96; 1996 H 274, § 1, eff. 8-8-96; 1995 H 167, eff. 6-11-96; 1995 H 249, eff. 7-17-95; 1994 S 355, eff. 12-9-94; 1994 H 415, eff. 11-9-94; 1993 H 173, eff. 10-12-93; 1993 S 115; 1990 S 3, H 514, H 591)

Aside:

1. See App. 407-408.

R.C. 3119.01(C)(4) (Extraordinary Medical Expenses Definition Former R.C. 3113.215(A)(12) intact)

§ 3119.01 Definitions.

* * *

(C) As used in this chapter:

* * *

(4) "Extraordinary medical expenses" means any uninsured medical expenses incurred for a child during a calendar year that exceed one hundred dollars.

[Extraordinary Expense Order Standing, Former R.C. 3113.215(B)(5)(f) intact]

CHAPTER 3119. CHILD SUPPORT ORDERS CALCULATION OF SUPPORT OBLIGATION

§ 3119.05 REQUIREMENTS WHEN COURT COMPUTES CHILD SUPPORT

When a court computes the amount of child support required to be paid under a court child support order or a child support enforcement agency computes the amount of child support to be paid pursuant to an administrative child support order, all of the following apply:

* * *

(F) The court shall not order an amount of child support for reasonable and ordinary uninsured medical or dental expenses in addition to the amount of the child support obligation determined in accordance with the schedule. **The court shall issue a separate order for extraordinary medical or dental expenses, including, but not limited to, orthodontia, psychological, appropriate private education, and other expenses, and may consider the expenses in adjusting a child support order.**

* * *

basic child support obligation that is between those two amounts and corresponds proportionally to the parents' actual combined **gross income.**

(H) When the court or agency calculates **gross income,** the court or agency, when appropriate, may average income over a reasonable period of years.

* * *

CREDIT(S): (2000 S 180, eff. 3-22-01)

[Former 3113.215(B)(6)]

§ 3119.24 CHILD SUPPORT UNDER SHARED PARENTING ORDERS: EXTRAORDINARY CIRCUMSTANCES AND OTHER FACTORS FOR DEVIATION

(A)(1) A court that issues a shared parenting order in accordance with section 3109.04 of the Revised Code shall order an amount of child support to be paid under the child support order that is calculated in accordance with the schedule and with the worksheet set forth in section 3119.022 of the Revised Code, through the line establishing the actual annual obligation, except that, if that amount would be unjust or inappropriate to the children or either parent and would not be in the best interest of the child because of the extraordinary circumstances of the parents or because of any other factors or criteria set forth in section 3119.23 of the Revised Code, the court may deviate from that amount.

(2) The court shall consider extraordinary circumstances and other factors or criteria if it deviates from the amount described in division (A)(1) of this section and shall enter in the journal the amount described in division (A)(1) of this section its determination that the amount would be unjust or inappropriate and would not be in the best interest of the child, and findings of fact supporting its determination.

(B) For the purposes of this section, "extraordinary circumstances of the parents" includes all of the following:

* * *

(3) Each parent's expenses, including child care **expenses, school tuition,** medical expenses, dental

expenses, and any other expenses the court considers relevant;

(4) Any other circumstances the court considers relevant.

CREDIT(S): (2000 S 180, eff. 3-22-01)

[Substantially Revised § 3113.21(C)(1)(e)]

R.C. § 3119.82 DESIGNATION OF PARENT WHO MAY CLAIM CHILDREN AS DEPENDENTS FOR FEDERAL INCOME TAX PURPOSES

Whenever a court issues, or whenever it modifies, reviews, or otherwise reconsiders a court child support order, it shall designate which parent may claim the children who are the subject of the court child support order as dependents for federal income tax purposes as set forth in section 151 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended. **If the parties agree on which parent should claim the children as dependents, the court shall designate that parent as the parent who may claim the children.** If the parties do not agree, the court, in its order, may permit the parent who is not the residential parent and legal custodian to claim the children as dependents for federal income tax purposes only if the court determines that this furthers the best interest of the children and, with respect to orders the court modifies, reviews, or reconsiders, the payments for child support are substantially current as ordered by the court for the year in which the children will be claimed as dependents. In cases in which the parties do not agree which parent may claim the children as dependents, the court shall consider, in making its determination, any net tax savings, the relative financial circumstances and needs of the parents and children, the amount of time the children spend with each parent, the eligibility of either or both parents for the federal earned income tax credit or other state or federal tax credit, and any other relevant factor concerning the best interest of the children.

* * *

CREDIT(S): (2000 s 180, eff. 3-22-01)

But See Law During Proceedings:

R.C. § 3113.21(C)(1)(e)

* * *

(C)(1) In any action in which support is ordered under Chapter 3115. or under section 2151.23, 2151.231, 2151.232, 2151.33, 215.36, 2151.49, 3105.18, 3105.21, 3109.05, 3109.19, 3111.13, 3113.04, 3113.07, 3113.216, or 3113.31 of the Revised Code, all of the following apply:

* * *

(e) Whenever a court *modifies, reviews, or otherwise reconsiders a* child support order, it may *reconsider* which parent may claim the children who are the subject of the child support order as dependents for federal income tax purposes as set forth in section 151 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended, and shall issue its determination on this issue as part of the child support order. The court in its order may permit the parent who is not the residential parent and legal custodian to claim the children as dependents for federal income tax purposes only if the payments for child support are current in full as ordered by the court for the year in which the children will be claimed as dependents.

* * *

[See 3105.171(F, I)]
(property)

CREDIT(S): (2000 S 180, eff. 3-22-01; 2000 H 535, eff. 4-1-01; 2000 H 509, eff. 9-21-00; 1999 H 471, eff. 7-1-00; 1999 H 222, eff. 11-2-99; 1998 S 170, eff. 3-30-99; 1997 H 352, eff. 1-1-98; * * *)

HISTORICAL AND STATUTORY NOTES

Publisher's Note: 3113.21 was amended by 2000 H 535, eff. 4-1-01, and repealed by 2000 S 180, eff. 3-22-01. The legal effect of these actions is in question. See Baldwin's Ohio Legislative Service Annotated, 2000, pages 11/L-2956 and 11/L-4178, or the OH-LEGIS or OH-LEGIS-OLD database on WESTLAW, for original versions of these Acts.

* * *

R.C. § 3105.171 Equitable division of marital and separate property,

* * *

(F) In making a division of marital property and in determining whether to make and the amount of any distributive award under this section, the court shall consider all of the following factors:

* * *

(6) The tax consequences of the property division upon the respective awards to be made to each spouse;

* * *

(8) Any division or disbursement of property made in a separation agreement that was voluntarily entered into by the spouses;

* * *

(I) A division or disbursement of property or a distributive award made under this section is not subject to future modification by the court.

* * *

[See 3113.21(C)(1)(e) repealed and displaced with 3119.82]

[Legislative Determination of Emancipation]

§ 3119.86 CIRCUMSTANCES REQUIRING DUTY OF SUPPORT BEYOND CHILD'S EIGHTEENTH BIRTHDAY

(A) Nothwithstanding section 3109.01 of the Revised Code, both of the following apply:

(1) The duty of support to a child imposed pursuant to a court child support order **shall continue beyond the child's eighteenth birthday only under the following circumstances:**

(a) The child is mentally or physically disabled and is incapable of supporting or maintaining himself or herself.

(b) The **child's parents have agreed to continue support beyond the child's eighteenth birthday pursuant to a separation agreement** that was incorporated into a decree of divorce or dissolution.

(c) The child continuously attends a recognized and accredited high school on a full-time basis on and after the child's eighteenth birthday.

(2) The duty of support to a child imposed pursuant to an administrative child support order shall continue beyond the child's eighteenth birthday only if the child continuously attends a recognized and accredited high school on a full-time basis on and after the child's eighteenth birthday.

(B) A court child support order **shall not remain in effect after the child reaches nineteen years of age unless the order provides that the duty of support continues under circumstances described** in division

(A)(1)(a) or (b) of this section for any period after the child reaches age nineteen. An administrative child support order shall not remain in effect after the child reaches age nineteen.

(C) If a court incorporates a separation agreement described in division (A)(1)(b) of this section into a decree of divorce or dissolution, **the court may not require the duty of support to continue beyond the date the child's parents have agreed support should terminate.**

(D) A parent ordered to pay support under a child support order shall continue to pay support under the order, including during seasonal vacation periods, until the order terminates.

CREDIT(S): (2000 S 180, eff. 3-22-01)

Compare with Version from S.B. 180, passed by Ohio Senate May 24, 2000

DURATION OF SUPPORT CONSOLIDATED (3109.05(E); 3105.21(D) WITH 3103.03(B) (left intact))

Sec. 3119.86. (A) NOTHWITHSTANDING SECTION 3109.01 OF THE REVISED CODE, BOTH OF THE FOLLOWING APPLY:

(1) A COURT CHILD SUPPORT ORDER SHALL REMAIN IN EFFECT BEYOND THE CHILD'S EIGHTEENTH BIRTHDAY AS LONG AS THE CHILD CONTINUOUSLY ATTENDS ON A FULL-TIME BASIS A RECOGNIZED AND ACCREDITED HIGH SCHOOL OR THE ORDER PROVIDES THAT THE DUTY OF SUPPORT OF THE CHILD CONTINUES BEYOND THE CHILD'S EIGHTEENTH BIRTHDAY, BUT THE ORDER SHALL NOT REMAIN IN EFFECT AFTER THE CHILD REACHES NINETEEN YEARS OF AGE UNLESS THE ORDER PROVIDES THAT THE DUTY OF SUPPORT CONTINUES FOR ANY PERIOD AFTER THE CHILD REACHES NINETEEN YEARS OF AGE;

* * *

(B) A PARENT ORDERED TO PAY SUPPORT UNDER A CHILD SUPPORT ORDER SHALL CONTINUE TO PAY SUPPORT UNDER THE ORDER, INCLUDING DURING SEASONAL VACATION PERIODS, UNTIL THE ORDER TERMINATES.

Aside:

1. Not in effect at date of decree, 12/30/1999.
2. Impact of S.B. 180 unconstitutional.
3. Ohio law is fuzzy on which version of statutes apply when support matters come back before courts (see SCO-00-2254 motion for stay submitted to Supreme Court of Ohio, in which Petitioner extensively briefed retroactivity).

LEGISLATIVE FINDINGS

[Compromised Former 3113.21(G)(4)(a) et al.]

§ 3119.88 REASONS FOR TERMINATION OF CHILD SUPPORT ORDER

Reasons for which a child support order should terminate include all of the following:

(A) The child's attainment of the age of majority if the child no longer attends an accredited high school on a full-time basis and **the child support order requires support to continue past the age of majority only if** the child continuously attends such a high school after attaining that age;

(B) The child ceasing to attend an accredited high school on a full-time basis after attaining the age of majority, if the child support order requires support to continue past the age of majority only if the child continuously attends such a high school after attaining that age;

(C) The child's death;

(D) The child's marriage;

(E) The child's emancipation;

(F) The child's enlistment in the armed services;

(G) The child's deportation;

(H) Change of legal custody of the child.

CREDIT(S): (2000 S 180, eff. 3-22-01)

Extract of T.d. 23

(75M ORDER, in effect 1994-1999)

Dec. 14, 1994, IMAGE 53-58

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

D'Ellen Bardes Plaintiff [ ] Obligor [ ] Obligee	Enter /s/ Ernest Karen CHIEF REFEREE
270-52-9846 7/21/56 SS# DOB	Date 12/12/94
-vs.-	Case No. A/DR-5802798
	Filed No. E-194749-0-
Samuel Todd Defendant [ ] Obligor [ ] Obligee	CSEA AAs _____
293-56-1656 10/4/54 SS# DOB	Judge Dinkelacker
	ORDER ALLOCATING PARENTING RIGHTS AND SUPPORT, PENDENTE, LITE, (75M)

[ENTERED DEC 14, 1994]

For good cause shown, as prescribed by Civil Rule 75(M), the Court orders:

1. **D'Ellen Bardes is designated the residential parent and legal custodian of the minor child(ren) Samuel & Garrison** subject to the following visitation: [ ] Standard Order [X] Other: standard order attached or modified Neither party shall remove the child(ren) from the jurisdiction without the express written consent of the other, or court order.

2. Husband shall pay to Wife as child support the sum of $539.10 per month per child, total $1078.20 per month. Husband shall pay to Wife as spousal support the sum of $275.00 per month. All payments must include 2% poundage and must be paid through the Child Support Enforcement Agency (CSEA) located at 800 Broadway. Cincinnati, Ohio 45202. Direct payments will be considered gifts. The order is payable bi-weekly (pay schedule) in a total amount of $637.05, which includes the 2% poundage. The obligor must make payments directly to the CSEA, until the deduction order becomes effective.

3. Household expenses/personal expenses/debts shall be paid as follows: each to pay their own expenses. Unless otherwise ordered each party shall pay all household expenses for his or her own resident.

4. **Husband shall obtain/maintain health insurance coverage for the parties' minor child(ren). Wife is designated to receive insurance reimbursements.** Party carrying health care coverage for the benefit of the other party shall continue such coverage until further order. If health care coverage was in effect at the time the complaint herein was filed and has been terminated by one party without the consent of the other, such insurance shall be reinstated immediately.

5. The basis of this order is [X] Affidavit [ ] Worksheet [ ] Other: _____

6. Additional documents/orders as necessary are attached hereto and incorporated herein for all purposes including [X] Support Worksheet: [X] Standard Visitations Order: [X] 3113.21 Order: [X] Health Care Order: [ ] Mediation Entry: [ ] Investigation Entry: [ ] Other:

_____

7. Additional Orders: _____

_____

Upon written request within 28 days of journalization of this order, the Court shall grant the requesting party an oral hearing on this order. A Request for Oral Hearing shall not suspend or delay the commencement of any provision of this order.

All child support and spousal support ordered by this order shall be withheld or deducted from the wages or checks of the obligor under the order in accordance with Section 3113.21 of the Revised Code and shall be forwarded to the obligee under the order in accordance with Section 3113.21 to 3113.21+ of the Revised Code. The specific withholding or deduction requirements or other appropriate requirements to be used to collect the support mail be set forth in and determined by reference to the notices that are rendered by the court or Child Support Enforcement Agency (CSEA) in accordance with Divisions (A)(2) and (D) of Section 3113.21 of the Revised Code or those court orders that are issued and sent out in accordance with Divisions (D)(6), (D)(7), or (H) of Section 3113.21 of the Revised Code, and shall be determined evidence the need for any mentioned to the support order. Those notices and court orders, plus the ___ provided by the court or agency that require the person who is required to pay support to notify the Child Support Enforcement Agency (CSEA) of any change in their employment scenes or of any other change in the means of their assets, are fiscal and are enforceable by the court.

This order is effective December 12, 1994.

/s/ William L. Murphy 12/13/94
Referee

* * *

[Worksheets & visitation order deleted]

Extract of T.d. 203

(Temporary Extraordinary Expenses Order)
Sept. 14, 1998, IMAGE 108-110
[Allocates Extraordinary Expenses 75%, 25%]

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

Name D'Ellen Bardes
SS# 270-52-9846
DOB

Plaintiff/Petitioner

-vs-

Name
Samuel Pogue Todd III
SS# 293-58-1656
DOB 01/04/54

Defendant/Petitioner
Obligor

Penelope R. Cunningham
JUDGE
Issue Date 09/14/98
Case No. DR9402798
File No. E194749
CSEA No. AA89964/01
JUDGE
Penelope R. Cunningham
MAGISTRATE
William Murphy

QUALIFIED MEDICAL CHILD SUPPORT ORDER

(O.R.C. 3113.217)

[ENTERED SEP. 14, 1998]

HEALTH INSURANCE PLAN:		AETNA US HEALTHCARE
PARTICIPANT: Obligor	Name:	Samuel Pogue Todd III
	Address:	670 Reiseling Knoll Cincinnati OH 45226-0000
PARTICIPANT EMPLOYER		Ross Sinclair & Assoc Inc
	Address:	Ross Sinclair & Assoc Inc 36 E 7th St Ste 1550 Cincinnati OH 45202-0000
ALTERNATE RECIPIENT(S): (Children)	Name(s): and DOB	Samuel Todd – 02/19/90; Garrison Todd – 09/20/91
	Address:	Samuel Todd – 1035 Paxton Ave – , 45208-0000 Garrison Todd – 1035 Paxton Ave – , 45208-0000

WHEREAS, the Court finds that health insurance coverage for the child(ren) referred as Alternate Recipient(s) to available to the Participant at a reasonable cost and that the Participant has been ordered to secure/maintain health insurance coverage for the child(ren).

IT IS HEREBY ORDERED THAT:

* * *

4. Obligee shall be responsible for the first $100.00 per calendar year, per child for all uninsured medical, dental, hospital, prescription, optical, psychological, psychiatric and orthodontic expenses, including co-payments to 1 deductible (designated "ordinary"). **The remaining uninsured expenses (designated "extraordinary"), including additional co-payments and/or deductibles** under the Health Insurance Plan for the Alternate Recipient(s), shall

be shared by the parties as follows: Obligor – 75% and Obligee – 25% or other agreement or order: _____

5. Any reimbursements for out-of-pocket medical, optical, hospital, dental, prescription or other reimbursable expenses covered under the Health Insurance Plan or any successor plan and paid for on behalf of the Alternate Recipient(s) insured child(ren) shall be made directly to:

Name: D'Ellen Bardes

Address: 1035 Paxton Ave
45208-0000

The insurer may continue to make payments for medical, optical, hospital, dental or prescription services directly to any health care provider in accordance with the Health Insurance Plan.

* * *

14. It is the intention of the parties that this Order continue to qualify as a Qualified Medical Child Support Order under ERISA Section 609, as it may be amended from time to time, and that the Plan Administrator shall reserve the right to reconfirm the qualified status of the Order as benefits become payable hereunder.

15. This Order shall not be construed so as to require the Health Insurance Plan to provide any type or form of benefit, or any option, which otherwise would not be provided to a dependent under the Plan.

16. This Order shall remain in effect until the earliest of: (a) the date that Participant loses his/her employer-sponsored health coverage as a result of his/her termination of employment, retirement, or death or (b) the date that the Alternate Recipient reaches the age of eighteen (18)

years and no longer attends any recognized and accredited high school on a full-time basis; or (c) the date that the employer no longer offers dependent health care coverage to any of its employees under the Health Insurance Plan or any successor plan.

[ENTERED SEP. 14, 1998]

HAVE SEEN AND APPROVED:

Plaintiff/Petitioner/ Obligor/Obligee	Defendant/Petitioner/ Obligor/Obligee
Attorney for Plaintiff/ Petitioner	Attorney for Defendant/ Petitioner
Accepted by Plan Committee or Administrator	Date

* * *

[ENTERED SEP. 14, 1998]

[See permanent order, App. 57-66, T.d. 342 QMCSO, Standing Order of Allocation of Extraordinary Medical Expenses (App. 407)]

[Notice of Appeal Shows Clerk's Website for DR 02798 Active as of 1/27/00]
Jan. 27, 2000

COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
HAMILTON COUNTY, OHIO

DEE ELLEN GARRISON BARDES

Plaintiff/Appellant

vs.

SAMUEL POGUE TODD III

Defendant/Appellee

C#000055
TRIAL CT. NO. DR9402798
Trial Ct. File: E 194749-0-7

- ***Lower court docket at Hamilton Cty Clerk of Courts web site (1994-2000):*** **http://www.courtclerk.org/aps/ttl/lns/smcpb021.asp?DR9402798**
- ***Partial full text documents available at*** **http://www.courtclerk.org/document.htm** **(*must then type in case # DR9402798*)**

Judge Penelope Cunningham
Magistrate William Murphy

NOTICE OF APPEAL

(Filed Jan. 27, 2000)

Now comes the Plaintiff/Appellant, Dee Ellen Garrison Bardes, pro se, and hereby gives notice of appeal in the Court of Appeals, First Appellate District of Ohio, Hamilton County, from a) final appealable orders and entries entered by said trial court on the 30th day of December, 1999; b) one earlier final appealable order issued 4/30/1999, re: ***denial of class Action status,*** now being appealed pursuant to App. R. 4(B)(5); c) a post decree entry issued on 1/26/2000 denying inter alia relief from judgment, and again ***denying direct certification of conflicts to Supreme Court of Ohio*** (See earlier motion to certify filed 10/27/98); d) other decisions and orders; e) various of the court's findings of fact made throughout the proceedings, and findings adopted; f) lack of findings, lack of orders rendered sufficient to provide a remedy to Plaintiff/Appellant.

* * *

Document Inquiry

Jim Cissell • Clerk of Courts Hamilton County, Ohio

Available documents for case: DR9402798

Get the Document	Date Filed	Document Type	Pages
DOCUMENT	2/3/00	Service Return	1
DOCUMENT	1/27/00	Filing	2
DOCUMENT	1/27/00	Filing	2
DOCUMENT	1/27/00	Filing	1
DOCUMENT	1/27/00	Filing	8
DOCUMENT	1/26/00	Entry	3
DOCUMENT	1/26/00	Filing	2
DOCUMENT	1/26/00	Filing	1
DOCUMENT	1/26/00	Filing	5
DOCUMENT	1/26/00	Filing	1
DOCUMENT	1/26/00	Filing	3
DOCUMENT	1/24/00	Motion	101
DOCUMENT	1/24/00	Transcript	1
DOCUMENT	12/30/99	Decree	43
DOCUMENT	12/30/99	Entry	1
DOCUMENT	12/30/99	Decree	30
DOCUMENT	12/20/99	Motion	8
DOCUMENT	12/10/99	Filing	52
DOCUMENT	12/7/99	Filing	38
DOCUMENT	12/2/99	Other	1
DOCUMENT	12/2/99	Entry	1
DOCUMENT	12/2/99	Entry	1
DOCUMENT	12/1/99	Motion	5
DOCUMENT	11/29/99	Entry	2
DOCUMENT	11/27/99	Filing	106
DOCUMENT	11/17/99	Entry	1
DOCUMENT	11/12/99	Filing	2
DOCUMENT	11/12/99	Filing	3
DOCUMENT	11/10/99	Motion	81
DOCUMENT	11/3/99	Motion	35
DOCUMENT	11/1/99	Entry	1

BEST AVAILABLE COPY

DOCUMENT	10/5/99	Filing	3
DOCUMENT	9/30/99	Filing	5
DOCUMENT	9/29/99	Filing	25
DOCUMENT	9/23/99	Motion	33
DOCUMENT	9/22/99	Entry	1
DOCUMENT	9/22/99	Entry	1
DOCUMENT	9/21/99	Motion	2
DOCUMENT	9/16/99	Filing	22
DOCUMENT	9/3/99	Entry	1
DOCUMENT	9/2/99	Entry	11
DOCUMENT	9/1/99	Entry	2
DOCUMENT	9/1/99	Entry	4
DOCUMENT	9/1/99	Entry	1
DOCUMENT	9/1/99	Entry	6
DOCUMENT	8/26/99	Entry	1
DOCUMENT	8/23/99	Filing	3
DOCUMENT	8/20/99	Filing	4
DOCUMENT	8/19/99	Entry	2
DOCUMENT	8/17/99	Motion	55
DOCUMENT	8/9/99	Filing	33
DOCUMENT	8/6/99	Motion	81
DOCUMENT	8/3/99	Filing	6
DOCUMENT	8/2/99	Filing	3
DOCUMENT	7/28/99	Entry	1
DOCUMENT	7/26/99	Motion	16
DOCUMENT	7/26/99	Motion	4
DOCUMENT	7/26/99	Motion	4
DOCUMENT	7/26/99	Motion	3
DOCUMENT	7/26/99	Motion	17
DOCUMENT	7/24/99	Motion	13
DOCUMENT	5/24/99	Entry	2
DOCUMENT	5/24/99	Entry	2
DOCUMENT	5/24/99	Entry	2
DOCUMENT	5/24/99	Entry	2
DOCUMENT	5/24/99	Entry	2
DOCUMENT	5/24/99	Entry	2
DOCUMENT	4/30/99	Entry	1
DOCUMENT	4/30/99	Entry	1
DOCUMENT	4/30/99	Entry	1
DOCUMENT	3/26/99	Entry	1
DOCUMENT	10/27/98	Other	31
DOCUMENT	2/13/98	Transcript	1

BOARD OF EDUCATION, CITY SCHOOL DISTRICT OF THE CITY OF CINCINNATI
OFFICE OF THE TREASURER
P O. BOX 5384, Cincinnati, Ohio 45201-5384
Phone (513) 475-7170, Fax (513) 475-4483

August, 2001

Dear Parent or Guardian:

The Student Fees form on ~~the reverse side of~~ this letter needs to be completed and returned to the school for each student.

Student fees are used to pay part of the cost of essential classroom materials that are very important for your child's successful performance in school. The fee schedule for the 2001-2002 school year reflects no increase over the prior school year and is shown on the back of this letter. As in past years, the fees are based in part on family income and the number of children you have in the Cincinnati Public Schools. We are striving to hold costs down without sacrificing quality services to our students.

Ohio House Bill 117 prohibits Cincinnati Public Schools from charging these fees to a student who receives Ohio Works First (OWF) or Disability Assistance (DA). If your student is eligible for a waiver for these student fees because of receiving Ohio Works First (OWF) or Disability Assistance (DA), you must indicate this in Section 3 ~~on the reverse side~~ and submit to the school an eligibility form completed and signed by your Hamilton County Department of Human Services caseworker. (~~See attached sample.~~ You must contact your caseworker to receive this form.)

Student fees are one-time charges for the entire 2001-2002 school year. You can help your child get off to a good start this year by completing the form ~~on the reverse side of this letter~~ as early as possible and returning it to your child's school. To qualify for an adjustment, payment must be made in the current school year. Fees for previous years will be charged at the full amount.

If you have questions, please call your child's school. Thank you for your cooperation in the early payment of student fees.

Sincerely,

Michael J. Geoghegan
Treasurer/CFO

MJG/as

SCHEDULE OF STUDENT FEES - PER CHILD

	NUMBER OF CHILDREN IN CINCINNATI PUBLIC SCHOOLS	FAMILY INCOME RANGE		
		$25,000/Yr. And Over (OVER $480/wk)	$8,500 - $24,999/Yr. ($165 - $480/wk)	$8,499/Yr. And Under (UNDER $165/wk)
		AMOUNT TO BE PAID PER CHILD PER YEAR		
1/2 Day KDG	1	13.00	9.00	4.00
All Day KDG		26.00	18.00	9.00
1 - 6		26.00	18.00	9.00
7 - 8		31.00	21.00	10.00
9 - 12		35.00	23.00	12.00
1/2 Day KDG	2	12.00	8.00	4.00
All Day KDG		23.00	16.00	8.00
1 - 6		23.00	16.00	8.00
7 - 8		29.00	20.00	10.00
9 - 12		33.00	22.00	11.00
1/2 Day KDG	3 or more	10.00	7.00	3.00
All Day KDG		18.00	12.00	7.00
1 - 6		18.00	12.00	7.00
7 - 8		23.00	16.00	8.00
9 - 12		25.00	17.00	9.00

NOTE - PARENT/GUARDIAN: - Please complete a separate form for each child and return with payment to the school your child attends.

FEES ARE DUE ANNUALLY. OBLIGATIONS WILL BE ISSUED AT THE HIGHEST SCHEDULED RATE IF FEES ARE NOT PAID BY JUNE 30 OF THE CURRENT SCHOOL YEAR.

Please pay with cash or money order
***** NO PERSONAL CHECKS WILL BE ACCEPTED *****

✂ ..... *Cut off and return to school by October 19, 2001* .....

1. Student's Name _____ Homeroom _____

School Attending _____ Amount Enclosed _____

Parent/Geardian's Signature _____ Date _____

SECTION 1	SECTION 2		
(✓) Number of Children in Family Attending Cincinnati Public Schools	(✓) FAMILY INCOME RANGE		
	$25,000/Yr. And Over	$8,500 - $24,999/Yr.	$8,499/Yr. And Under
___ 1 ___ 2 ___ 3 or more	___ (OVER $480/wk)	___ ($165 - $480/wk)	___ (UNDER $165/wk)

SECTION 3

We receive Ohio Works First (OWF) or Disability Assistance (DA). yes no
If yes, you must contact your Hamilton County Department of Human Resources caseworker to obtain an eligibility form to submit to your school.

List Names and Schools for no more than 3 additional children attending Cincinnati Public Schools

	Student Name	School Attending
2.		
3.		
4.		

[LOGO]
GEORGE V. VOINOVICH
GOVERNOR

STATE OF OHIO
OFFICE OF THE GOVERNOR
COLUMBUS 43266-0601

September 9, 1997

Ms. Dee Bardes
1035 Paxton Ave.
Cincinnati, OH 45208

Dear Ms. Bardes:

Thank you for your recent correspondence regarding House Bill 352, which was passed by the General Assembly and I signed into law on August 28, 1997. Some of the provisions of this bill include the creation of a centralized collection and disbursement system for all child support cases and putting new paternity establishment procedures into place.

Enclosed please find a copy of the press release that was issued, which will provide you with further information regarding this important measure. Please feel free to contact my office in the future with any other matters relevant to state government. Thank you for your interest in this important piece of legislation.

Sincerely,

/s/ George V. Voinovich
George V. Voinovich
Governor

GVV/dp

[Address Omitted in Printing]

[LOGO]
Ohio TUITION TRUST AUTHORITY

the smart start for college

1-800-AFFORD-IT
233-6734

September 4, 1998

Dee Bardes
1035 Paxton Avenue
Cincinnati, Ohio 45208-2828

RE: Contract Number 810432
Contract Number 810424

Dear Ms. Bardes:

From our conversation a few weeks ago I have been able to obtain the information you requested. That and more is listed below:

- The Ohio Prepaid Tuition Program is administered by the Ohio Tuition Trust Authority (OTTA), which is a state agency that was created by the Ohio General Assembly and the programs of which are governed by Ohio Revised Code Chapter 3334. The legislation passed in 1989.

- OTTA sells tuition units which are guaranteed to keep pace with the tuition inflation at Ohio public four-year universities. However, tuition units may be used at any accredited school in the country.

- OTTA is backed by the full faith and credit of the state of Ohio, which is the highest level of backing the state provides. That makes this program one of the safest savings vehicles you can choose.

- The program is a state tax exempt, which means you will not pay state tax as long as prepaid tuition is used for college tuition and expense.
- The program is federal tax deferred, which means when the program is used for college tuition and expenses, federal taxes are deferred. At the time your beneficiary reaches college and begins the matriculation or payout phase of the contract, he/she will be responsible for paying the federal income tax on the value over and above the original purchase price.

  NOTE: OTTA continually works with the College Saving Plan Network (currently made up of 43 states) to received better federal tax treatment for our participants.
- There are other possible tax advantages, but you will need to contact a legal tax consultant for additional information, as each family financial status is different.
- A beneficiary may have more than one account. Each account will be treated individually.
- Annual account statements are sent each year at the end of the state's fiscal year.
- Due to recent legislation tuition units can now be used to pay for room and board. Room and board expenses are defined as those which meet the minimum guidelines set by the institution to calculate the cost of attendance for federal financial aid programs. Typically this includes a standard double-occupancy room with a 19 meal food plan. Of course this will vary slightly depending on the college or university your child attends.

You also inquired about this program being made part of any divorce settlements in the past. The answer is yes. But due to confidentiality I will not be able to release any

specific information; however, this program has been used around the state in divorce settlements. Judges and attorneys have inquired about this program and have drawn it up in settlements. Most required that both parents purchase a specific number of units for their child or children.

You specifically inquired about Kenyon College. Below are the number of units it has taken since 1996 to attend per year.

1995-96	$20,890	528 Units
1996-97	$22,010	524 Units
1997-98	$22,850	531 Units
1998-99	$27,780*	645 Units

*Verbal confirmation from school.

I hope this information helps. If you have any additional questions or need additional help, please let me know.

Sincerely,

/s/ Susan Sloan
Susan L. Sloan
Director of Operations
Ohio Tuition Trust Authority

[SEAL]

Attorney General
Betty D. Montgomery

September 18, 1998

Ms. Dee Bardes
1035 Paxton Avenue
Cincinnati, Ohio 45208-2828

Dear Ms. Bardes:

This letter is in response to our telephone conversation yesterday concerning your request for certain information from the Ohio Tuition Trust Authority ("OTTA"). It is my understanding from our conversation that you are seeking to identify those OTTA account holders who are participating in the Prepaid Tuition Plan under the direction of a divorce decree or divorce order. You indicated that such information would be helpful in your attempt to convince courts that Ohio's Prepaid Tuition Plan is a viable option when imposing an order of child support.

As I attempted to explain during our conversation, OTTA does not maintain any account information related to divorce decrees or divorce orders. Information concerning the identify of a purchaser or a beneficiary of tuition or units is deemed confidential. In fact, all records of the Authority indicating the identity of purchasers or beneficiaries of tuition credits the number of tuition credits purchased, used, or refunded under a tuition payment contract are not public records within the meaning of the Ohio's Public Records Act (Ohio Revised Code Section 149.43).

In spite of my efforts to explain to you that the Authority does not maintain the information you requested, you nonetheless mentioned that you would consider taking legal actions to secure aforementioned information. While I can appreciate your determination, I strongly suggest that, with the knowledge that the Authority does not keep records related to whether any account may be court ordered, you submit any further request to the Authority in writing with a detailed explanation of the exact manner in which OTTA might assist you. The Authority has on occasion provided courts with general information about the Ohio Prepaid Tuition Program and if asked, would be pleased to do the same for you. If you have further questions about this matter, please do not hesitate to contact me.

Sincerely,

Betty D. Montgomery
Attorney General

/s/ Theodore Adams
Theodore Adams
Assistant Attorney General
Assistant Chief, Education Section

cc: Barbara Jennings, Executive Director,
Ohio Tuition Trust Authority
Jan Neiger, Assistant Attorney General,
Public Affairs Section

[Address omitted in Printing]

January 13, 1999

[LOGO]
Ohio **TUITION TRUST AUTHORITY**
the smart start for college

1-800-AFFORD-IT
233-6734

Dee Bardes
1035 Paxton Avenue
Cincinnati, Ohio 45208-2828

RE: Court Action using Ohio Tuition Trust Authority

Dear Ms. Bardes,

Enclosed is a copy of a Court Order that instructs a Defendant to enroll two children in the Ohio Tuition Trust Authority's Prepaid College Program.

Before notifying you of this court order, I contacted the Defendant and requested permission to provide you with this information. The Defendant did give verbal authorization to release this information.

If I can be of further service to you, please let me know.

Sincerely,

/s/ Susan Sloan
Susan L. Sloan
Ohio Tuition Trust Authority
Director of Operations

enclosure

IN THE COURT OF COMMON PLEAS
FAMILY COURT DIVISION
STARK COUNTY, OHIO

~~[illegible]~~

Plaintiff

vs

~~[illegible]~~

Defendant

CASE NO. DR89-0871
JUDGE EDWARDS
JUDGMENT ENTRY
(Agreed Entry)

(Filed Feb. 16, 1995)

The court being duly advised in the premises that the parties in the within action have reached an agreement as to the issues raised in Plaintiff's Motion filed January 24, 1995 and as to all issues regarding the support and educations of their children, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. ~~[illegible]~~

2. The Defendant ~~[illegible]~~ shall enroll in The Prepaid Tuition Program of The Ohio Tuition Trust Authority, P. O. Box 691078, Cincinnati, Ohio 45269-1078 and shall purchase college tuition units for each of the minor children as follows:

On behalf of ~~[illegible]~~ (D.O.B. 2/16/79) -

100 units on or before August 1, 1995
100 units on or before August 1, 1996
100 units on or before August 1, 1997
100 units on or before August 1, 1998

On behalf of ~~[illegible]~~ (D.O.B. 2/15/83) -

100 units on or before August 1, 1999
100 units on or before August 1, 2000

100 units on or before August 1, 2001
100 units on or before August 1, 2002

TODD M. BENTZEL
ATTORNEY AT LAW
[illegible] N. Main Street – P. O. Box [illegible]
[Illegible], Ohio 44663

THE HANNAH REPORT

Vol. 122, No. 111
Wednesday, June 11, 1997

Ohio's Legislative and Governmental Information Source

* * *

SENATE JUDICIARY

Wednesday, June 11, 1997, 10:00 a.m.,
North HR
Sen. Louis Blessing
Donna Russell 466-8068

SB112 (SCHAFRATH R) To make changes in the child custody laws – Ohio Parenting Act.

Opponent testimony was presented by Dee Bardes, Junior League of Cincinnati. She said the bill will reduce the already "nomimal" dollars paid to mothers based on nights the child sleeps in the father's home. It will encourage fathers to have their children sleep over more just to reduce child support payments, she suggested. A mother would have a financial disincentive to have the children stay with the father and would be less likely to encourage the children to stay with him. Bardes said the bill eliminates the court discretion to award sole custody and it overlaps with the Ohio Family Feasibility Study. She asked the committee to support a statute governing post-majority support for educational expenses.

PROCEDURAL DEFECT INADEQUATE TO DERAIL FEDERAL JURISDICTION OVER DISCLOSURAL RIGHTS

1) **App. 150, #7, T.d. 314, Decisions & Orders, trial court decided and overruled P's objections re: error by Court in dismissing issues of state and federal constitutional claims raised by Plaintiff in her Closing Argument, T.d. 193 (with 5 appendices binders also docketed as T.d. 193); Court further declined to affirm P's assertion with regard to her constitutional claims;**

2) **App. 157,** #2, Order deleting SSNs and D.O.Bs from T.d. 283 [**App. 170**] caption [but order facially not reflecting deletion]. [redaction ordered without motion];

3) **App. 144,** #5, Holding admitted Civ. R. 53 requirement that "once objections are filed, the Court must then consider and rule on the objections." [reviewable order required to issue by law];

4) T.p. 167, 10/21/1997, p. 14, line 6-p. 16, line 12 (raised orally in front of Magistrate in hearing) (dismissed by him as horse already left the barn-suggested that Mother talk to Clerk);

5) T.d. 193, 3/18/1998, Part I: Plaintiff's Closing Argument [*Written extension of Trial*], p. 75-76, #PP, ("PP. This Court's Failure to make an order to seal our detailed and extensive domestic relations file (now multiple boxes, including medical records) from public view will violate our family's constitutionally protected rights to privacy and will jeopardize our rights to ensure our family's financial and personal safety, and further causes need to redefine the definition of a "public record" given the automating of Ohio's domestic relations files and the widespread

accessibility to all divorcing persons initimate financial and medical records via the Internet and dial up access.");

6) T.d. 202, Sec. IV, #Q, p. 72, 9/10/1998 "PLAINTIFF'S OBJECTIONS WITH PRESERVATION OF CONSTITUTIONAL VIOLATIONS, TO MAGISTRATE'S 8/27/1998 DECISION WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW", objecting to (T.d. 201, 8/27/1998, Magistrate's Decision With Findings of Fact And Conclusions of Law) ("Q. THE TRIAL COURT COMMITTED ERROR OF LAW PREJUDICIAL TO MOTHER AND THE CHILDREN BY FAILING TO MAKE CONCLUSIONS OF LAW REGARDING THE SEALING OF THE PARTIES COURT RECORD DUE TO THE PARTIES' RIGHTS TO PRIVACY, THE CONTENTS OF THE RECORD, AND THE INCREASING AUTOMATION OF THE COURTS' RECORDS."; In the same Objections filing, at (T.d. 201, page 10), Mother claimed: ("**THE TRIAL COURT ERRS IN DISMISSING ISSUES OF STATE AND FEDERAL (FIRST AMENDMENT, FIFTH AMENDMENT, NINTH AMENDMENT, AND FOURTEENTH AMENDMENT) CONSTITUTIONAL CLAIMS AS RAISED IN MOTHER'S CLOSING ARGUMENT AND THROUGHOUT THE RECORD, BY NOT MAKING FINDINGS AND CONCLUSIONS RELATED TO SUCH CLAIMS.**") *See Constitutional arguments, and attached appendices.* This reference cited to the comprehensive appendices tracing constitutional violations with full text, leading cases, various claims, albeit docketed late, and cited below (T.d. 345-347). At (T.d. 345, p. 1/65), #H of the Table of Contents lists "**Right to Privacy, N.E.C. [not elsewhere classified] & Fourth Amendment** 39 [commencing on page # 39]". On p. 39, §4.1 states " * * * " [full text of 4th Amndmt.]. The top of page 40, immediately following such citation,

the paragraph states: (*"Claims: include, right of privacy, due process, freedom from abuse of court system, right to meaningful remedy; Failure to Seal Domestic Relations records with financial and medical information; et al"*) [other constitutional bases for disclosural rights, First Amendment, 14th Amendment (privileges, equal protection, due process), Article IV, privileges, et al. with landmark cases];

7) T.d. 212, 10/8/1998, P's Motion and Affidavit for declaratory Judgment re: Updated Civ. R. 53, and T.d. 213, 10/23/98 P's Notice of Hearing on P's 10/8/98 Motion & Affidavit for Declaratory Judgment re: Updated Civ. R. 53 (<Transcript at T.p. 216?, 11/3/98, check if reissued, as listed on Civ. Docket statement in First District>);

8) **App. 160-164**, Decision (T.d. 312, 9/1/1999, p. 2-5) includes Aug. 18, 1999 letter from Mr. Timothy Meyer, Assistant Chief Deputy, Hamilton County Clerk of Courts [*See Burns v. Ohio*, 360 U.S. 252, 254-257 (1959)] [*clerk's letter an order of court representing policy of state*];

9) T.p. 349, 1/24/2000, p. ___, nine pages from end (judge asserting problem of scanning and releasing personal information is out of courts hands –);

10) T.d. 338, 12/10/99, in Plaintiff's Proposed Judgment Entry Decree of Divorce and Parenting Decree, filed 12/10/1999, p. 2, #2; On p. 4 of the Judgment Entry Decree of Shared Parenting (in same filing).